

CHAPTER 23

AN ACT concerning competition in the electric power and gas industries and supplementing, amending and repealing certain sections of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.48:3-49 Short title.

1. Sections 1 through 46, and sections 51, 57, 59, 60, 63, 65 and 66 of this act shall be known and may be cited as the "Electric Discount and Energy Competition Act."

C.48:3-50 Findings, declarations relative to competition in the electric power and gas industries.

2. a. The Legislature finds and declares that it is the policy of this State to:

(1) Lower the current high cost of energy, and improve the quality and choices of service, for all of this State's residential, business and institutional consumers, and thereby improve the quality of life and place this State in an improved competitive position in regional, national and international markets;

(2) Place greater reliance on competitive markets, where such markets exist, to deliver energy services to consumers in greater variety and at lower cost than traditional, bundled public utility service;

(3) Maintain adequate regulatory oversight over competitive purveyors of retail power and natural gas supply and other energy services to assure that consumer protection safeguards inherent to traditional public utility regulation are maintained, without unduly impeding competitive markets;

(4) Ensure universal access to affordable and reliable electric power and natural gas service;

(5) Maintain traditional regulatory authority over non-competitive energy delivery or other energy services, subject to alternative forms of traditional regulation authorized by the Legislature;

(6) Ensure that rates for non-competitive public utility services do not subsidize the provision of competitive services by public utilities;

(7) Provide diversity in the supply of electric power throughout this State;

(8) Authorize the Board of Public Utilities to approve alternative forms of regulation in order to address changes in technology and the structure of the electric power and gas industries; to modify the regulation of competitive services; and to promote economic development;

(9) Prevent any adverse impacts on environmental quality in this State as a result of the introduction of competition in retail power markets in this State;

(10) Ensure that improved energy efficiency and load management practices, implemented via marketplace mechanisms or State-sponsored programs, remain part of this State's strategy to meet the long-term energy needs of New Jersey consumers;

(11) Preserve the reliability of power supply and delivery systems as the marketplace is transformed from a monopoly to a competitive environment; and

(12) Provide for a smooth transition from a regulated to a competitive power supply marketplace, including provisions which afford fair treatment to all stakeholders during the transition.

b. The Legislature further finds and declares that:

(1) In a competitive marketplace, traditional utility rate regulation is not necessary to protect the public interest and that competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation;

(2) Due to regulatory changes, technological developments and other factors, a competitive electric generation and wholesale supply market has developed over the past several years;

(3) Electric power services are available in the wholesale markets at prices substantially lower than the current cost of electric power generation and supply services provided to retail customers by this State's electric public utilities;

(4) The traditional retail monopoly which electric public utilities have held in this State for electric power generation and supply services should be eliminated, so that all New Jersey energy consumers will be afforded the opportunity to access the competitive market for such services and to select the electric power supplier of their choice;

(5) The traditional electric public utility rate regulation which the Board of Public Utilities has exercised over retail power supply in this State requires reform in order to provide retail

choice and bring the benefits of competition to all New Jersey consumers;

(6) Permitting the competitive electric power generation and supply marketplace to operate without traditional utility rate regulation will produce a wider selection of services at competitive market-based prices;

(7) Certain regulatory authority, including requiring electric power suppliers and gas suppliers to maintain offices in this State, is necessary to ensure continued safety, reliability and consumer protections in the electric power and gas industries; and to ensure accessibility to electric power suppliers and gas suppliers by the Board of Public Utilities, consumers, electric public utilities and gas public utilities; and

(8) The electric power generation marketplace and gas supply marketplace should be subject to appropriate consumer protection standards that will ensure that all classes of customers in all regions of this State are properly and adequately served.

c. The Legislature therefore determines that it is in the public interest to:

(1) Authorize the Board of Public Utilities to permit competition in the electric generation and gas marketplace and such other traditional utility areas as the board determines, and thereby reduce the aggregate energy rates currently paid by all New Jersey consumers;

(2) Provide for regulation of new market entrants in the areas of safe, adequate and proper service and customer protection;

(3) Relieve electric public utilities from traditional utility rate regulation in the provision of services which are deemed to be provided in a competitive market;

(4) Provide each electric public utility the opportunity to recover above-market power generation and supply costs and other reasonably incurred costs associated with the restructuring of the electric industry in New Jersey, the level of which will be determined by the Board of Public Utilities to the extent necessary to maintain the financial integrity of the electric public utility through the transition to competition, subject to the achievement of the other goals and provisions of this act, and subject to the public utility having taken and continuing to take all reasonably available steps to mitigate the magnitude of its above-market electric power generation and supply costs; and

(5) Provide the Board of Public Utilities with ongoing oversight and regulatory authority to monitor and review composition of the electric generation and retail power supply marketplace in New Jersey, and to take such actions as it deems necessary and appropriate to restore a competitive marketplace in the event it determines that one or more suppliers are in a position to dominate the marketplace and charge anti-competitive or above-market prices.

C.48:3-51 Definitions relative to competition in the electric power and gas industries.

3. As used in this act:

"Assignee" means a person to which an electric public utility or another assignee assigns, sells or transfers, other than as security, all or a portion of its right to or interest in bondable transition property. Except as specifically provided in this act, an assignee shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the board;

"Basic generation service" means electric generation service that is provided, pursuant to section 9 of this act, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the board;

"Board" means the New Jersey Board of Public Utilities or any successor agency;

"Bondable stranded costs" means any stranded costs of an electric public utility approved by the board for recovery pursuant to the provisions of this act, together with, as approved by the board: (1) the cost of retiring existing debt or equity capital of the electric public utility,

including accrued interest, premium and other fees, costs and charges relating thereto, with the proceeds of the financing of bondable transition property; (2) if requested by an electric public utility in its application for a bondable stranded costs rate order, federal, State and local tax liabilities associated with stranded costs recovery or the transfer or financing of such property or both, including taxes, whose recovery period is modified by the effect of a stranded costs recovery order, a bondable stranded costs rate order or both; and (3) the costs incurred to issue, service or refinance transition bonds, including interest, acquisition or redemption premium, and other financing costs, whether paid upon issuance or over the life of the transition bonds, including, but not limited to, credit enhancements, service charges, overcollateralization, interest rate cap, swap or collar, yield maintenance, maturity guarantee or other hedging agreements, equity investments, operating costs and other related fees, costs and charges, or to assign, sell or otherwise transfer bondable transition property;

"Bondable stranded costs rate order" means one or more irrevocable written orders issued by the board pursuant to this act which determines the amount of bondable stranded costs and the initial amount of transition bond charges authorized to be imposed to recover such bondable stranded costs, including the costs to be financed from the proceeds of the transition bonds, as well as on-going costs associated with servicing and credit enhancing the transition bonds, and provides the electric public utility specific authority to issue or cause to be issued, directly or indirectly, transition bonds through a financing entity and related matters as provided in this act, which order shall become effective immediately upon the written consent of the related electric public utility to such order as provided in this act;

"Bondable transition property" means the property consisting of the irrevocable right to charge, collect and receive, and be paid from collections of, transition bond charges in the amount necessary to provide for the full recovery of bondable stranded costs which are determined to be recoverable in a bondable stranded costs rate order, all rights of the related electric public utility under such bondable stranded costs rate order including, without limitation, all rights to obtain periodic adjustments of the related transition bond charges pursuant to subsection b. of section 15 of this act, and all revenues, collections, payments, money and proceeds arising under, or with respect to, all of the foregoing;

"Broker" means a duly licensed electric power supplier that assumes the contractual and legal responsibility for the sale of electric generation service, transmission or other services to end-use retail customers, but does not take title to any of the power sold, or a duly licensed gas supplier that assumes the contractual and legal obligation to provide gas supply service to end-use retail customers, but does not take title to the gas;

"Buydown" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a reduction in the pricing, or the restructuring of other terms to reduce the overall cost of the power contract, for the remaining succeeding period of the purchased power arrangement or arrangements;

"Buyout" means an arrangement or arrangements involving the buyer and seller in a given power purchase contract and, in some cases third parties, for consideration to be given by the buyer in order to effectuate a termination of such power purchase contract;

"Class I renewable energy" means electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner;

"Class II renewable energy" means electric energy produced at a resource recovery facility or hydropower facility, provided that such facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that such facility meets the highest environmental standards and minimizes any impacts to the environment and local communities;

"Competitive service" means any service offered by an electric public utility or a gas public utility that the board determines to be competitive pursuant to section 8 or section 10 of this act or that is not regulated by the board;

"Comprehensive resource analysis" means an analysis including, but not limited to, an

assessment of existing market barriers to the implementation of energy efficiency and renewable technologies that are not or cannot be delivered to customers through a competitive marketplace;

"Customer" means any person that is an end user and is connected to any part of the transmission and distribution system within an electric public utility's service territory or a gas public utility's service territory within this State;

"Customer account service" means metering, billing, or such other administrative activity associated with maintaining a customer account;

"Demand side management" means the management of customer demand for energy service through the implementation of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State;

"Electric generation service" means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto;

"Electric power generator" means an entity that proposes to construct, own, lease or operate, or currently owns, leases or operates, an electric power production facility that will sell or does sell at least 90 percent of its output, either directly or through a marketer, to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located. The designation of an entity as an electric power generator for the purposes of this act shall not, in and of itself, affect the entity's status as an exempt wholesale generator under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq.;

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of this act to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of this act;

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that transmits and distributes electricity to end users within this State;

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Energy agent" means a person that is duly registered pursuant to the provisions of this act, that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold;

"Energy consumer" means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator;

"Financing entity" means an electric public utility, a special purpose entity, or any other assignee of bondable transition property, which issues transition bonds. Except as specifically provided in this act, a financing entity which is not itself an electric public utility shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Gas public utility" means a public utility, as that term is defined in R.S.48:2-13, that distributes gas to end users within this State;

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Gas supplier" means a person that is duly licensed pursuant to the provisions of this act to

offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the event that a gas public utility is not part of a holding company legal structure, a related competitive business segment of that gas public utility may be a gas supplier, provided that related competitive business segment is structurally separated from the gas public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relations standards adopted by the board pursuant to subsection k. of section 10 of this act;

"Gas supply service" means the provision to customers of the retail commodity of gas, but does not include any regulated distribution service;

"Government aggregator" means any government entity subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written contract with a licensed electric power supplier or a licensed gas supplier for: (1) the provision of electric generation service, electric related service, gas supply service, or gas related service for its own use or the use of other government aggregators; or (2) if a municipal or county government, the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Government energy aggregation program" means a program and procedure pursuant to which a government aggregator enters into a written contract for the provision of electric generation service or gas supply service on behalf of business or residential customers within its territorial jurisdiction;

"Governmental entity" means any federal, state, municipal, local or other governmental department, commission, board, agency, court, authority or instrumentality having competent jurisdiction;

"Market transition charge" means a charge imposed pursuant to section 13 of this act by an electric public utility, at a level determined by the board, on the electric public utility customers for a limited duration transition period to recover stranded costs created as a result of the introduction of electric power supply competition pursuant to the provisions of this act;

"Marketer" means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers;

"Net proceeds" means proceeds less transaction and other related costs as determined by the board;

"Net revenues" means revenues less related expenses, including applicable taxes, as determined by the board;

"On-site generation facility" means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way;

"Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity;

"Private aggregator" means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers;

"Public utility holding company" means: (1) any company that, directly or indirectly, owns, controls, or holds with power to vote, ten percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor;

"Regulatory asset" means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled "Accounting for the Effects of Certain Types of Regulation," or any successor standard and as deemed recoverable by the board;

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services;

"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility;

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse;

"Restructuring related costs" means reasonably incurred costs directly related to the restructuring of the electric power industry, including the closure, sale, functional separation and divestiture of generation and other competitive utility assets by a public utility, or the provision of competitive services as such costs are determined by the board, and which are not stranded costs as defined in this act but may include, but not be limited to, investments in management information systems, and which shall include expenses related to employees affected by restructuring which result in efficiencies and which result in benefits to ratepayers, such as training or retraining at the level equivalent to one year's training at a vocational or technical school or county community college, the provision of severance pay of two weeks of base pay for each year of full-time employment, and a maximum of 24 months' continued health care coverage. Except as to expenses related to employees affected by restructuring, "restructuring related costs" shall not include going forward costs;

"Retail choice" means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service or basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of this act;

"Shopping credit" means an amount deducted from the bill of an electric public utility customer to reflect the fact that such customer has switched to an electric power supplier and no longer takes basic generation service from the electric public utility;

"Social program" means a program implemented with board approval to provide assistance to a group of disadvantaged customers, to provide protection to consumers, or to accomplish a particular societal goal, and includes, but is not limited to, the winter moratorium program, utility practices concerning "bad debt" customers, low income assistance, deferred payment plans, weatherization programs, and late payment and deposit policies, but does not include any demand side management program or any environmental requirements or controls;

"Societal benefits charge" means a charge imposed by an electric public utility, at a level determined by the board, pursuant to, and in accordance with, section 12 of this act;

"Stranded cost" means the amount by which the net cost of an electric public utility's electric generating assets or electric power purchase commitments, as determined by the board consistent with the provisions of this act, exceeds the market value of those assets or contractual commitments in a competitive supply marketplace and the costs of buydowns or buyouts of power purchase contracts;

"Stranded costs recovery order" means each order issued by the board in accordance with subsection c. of section 13 of this act which sets forth the amount of stranded costs, if any, the board has determined an electric public utility is eligible to recover and collect in accordance with the standards set forth in section 13 and the recovery mechanisms therefor;

"Transition bond charge" means a charge, expressed as an amount per kilowatt hour, that is authorized by and imposed on electric public utility ratepayers pursuant to a bondable stranded costs rate order, as modified at any time pursuant to the provisions of this act;

"Transition bonds" means bonds, notes, certificates of participation or beneficial interest or other evidences of indebtedness or ownership issued pursuant to an indenture, contract or other agreement of an electric public utility or a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance or refinance bondable stranded costs and which are, directly or indirectly, secured by or payable from bondable transition property. References in this act to principal, interest, and acquisition or redemption premium with respect to transition bonds which are issued in the form of certificates of participation or beneficial interest or other evidences of ownership shall refer to the comparable payments on such securities;

"Transmission and distribution system" means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within this State; and

"Universal service" means any service approved by the board with the purpose of assisting low-income residential customers in obtaining or retaining electric generation or delivery service.

C.48:3-52 Electric public utilities, unbundled rate schedules.

4. a. Simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act, each electric public utility shall unbundle its rate schedules such that discrete services and charges provided, which were previously included in the bundled utility rate, are separately identified and charged in its tariffs. Such discrete services and charges shall include, at a minimum, customer account services and charges, distribution and transmission services and charges and generation services and charges, and the board may require that additional services and charges be unbundled and separately billed. Billings for such services also shall include charges related to regulatory assets and may include restructuring related costs. In the case of commercial and industrial customers, rate schedules shall remain unbundled, and in all billings for such customers after the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act, the amount of the market transition charge authorized pursuant to section 13 of this act shall be added to the discrete services and charges identified. Residential rate schedules once unbundled, may be totally or partially rebundled for residential billing purposes. All competitive services offered by an electric public utility shall be charged separately from non-competitive services.

b. As part of its unbundled rate structure established in compliance with subsection a. of this section, an electric public utility providing basic generation service in accordance with section 9 of this act shall establish a separate charge for such service, as reviewed and approved by the board consistent with this act for billing purposes. An electric public utility which offers basic generation service in accordance with section 9 of this act shall also provide, simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act, shopping credits applicable to the bills of their retail customers who choose to purchase electric generation service from a duly licensed electric

power supplier. The board shall determine the appropriate level of shopping credits for each electric public utility in a manner consistent with the findings and declarations of the Legislature as set forth in section 2 of this act, and other provisions of this act. The reduction in electric public utility rates, as determined by the board in subsections d. and e. of this section, shall be consistent with the goals of this act, including the creation of shopping credits, as appropriate, pursuant to this subsection.

Each customer bill issued after the implementation of the rate reductions required or determined by the board pursuant to this section, including but not limited to any enhanced reductions resulting from a phase-in allowed pursuant to paragraph (2) of subsection d. of this section, shall indicate the dollar amount of the difference between what the customer's total charges would have been without the reduction and the total charges in that bill.

c. The board shall require electric public utilities to submit rate unbundling filings in a form adopted by the board. The board shall review such filings and, after hearing and an opportunity for public comment, render a determination as to the appropriate, unbundled rates consistent with the provisions of this act. Notwithstanding any other provisions of this act, an unbundling of electric public utility rates implemented as a result of this section shall not result in a reallocation of utility cost responsibility between or among different classes of customers.

d. (1) During a term to be fixed by the board, each electric public utility shall reduce its aggregate level of rates for each customer class, including any surcharges assessed pursuant to this act, by a percentage to be approved by the board, which shall be at least 10 percent relative to the aggregate level of bundled rates in effect as of April 30, 1997, subject to the provisions of paragraph (2) of this subsection.

(2) The board may set a term for an electric public utility to phase in a rate reduction of ten percent or more during the first 36 months after the starting date for the implementation of retail choice as provided in subsection a. of section 5 of this act; provided, however, that, on the starting date for the implementation of retail choice as provided in subsection a. of section 5 of this act, each electric public utility shall reduce its aggregate level of rates for each customer class, including any surcharges assessed pursuant to this act, by no less than five percent.

e. The board may order a rate reduction that exceeds the 10 percent rate reduction as provided in subsection d. of this section, if it determines that such reductions are necessary in order to achieve just and reasonable rates.

f. The board shall determine, consistent with the provisions of this act, the manner in which to apply the rate reductions established pursuant to subsections d. and e. of this section among some or all of the unbundled rate components, including the distribution and transmission charges and market transition charges, in order to provide for a sustainable aggregate rate reduction for customers and to encourage a competitive retail supply marketplace.

g. Any subsequent order to reduce rates beyond those authorized by subsections d. and e. of this section may only be issued after notice and hearing.

h. Any tax reduction implemented pursuant to P.L.1997, c.162 (C.54:30A-100 et al.) shall not be credited towards the rate reductions required pursuant to subsection d. and authorized pursuant to subsections d. and e. of this section.

i. The rate reduction associated with the reduction in the utility's capital costs, including related taxes, that results from the issuance of transition bonds pursuant to section 14 of this act shall be made no later than the date on which the transition bond charge, approved pursuant to section 14 of this act, becomes effective.

j. The maximum level of rate reduction determined by the board pursuant to this section shall be sustained at least until the end of the 48th month following the starting date for the implementation of retail choice as provided in subsection a. of section 5 of this act.

C.48:2-53 Provision of retail choice of electric power suppliers.

5. a. By order the board shall provide that by no earlier than June 1, 1999, but in no event later than August 1, 1999, each electric public utility shall provide retail choice of electric power suppliers for its customers. Each electric public utility shall fully implement retail choice in 100 percent of its franchise area within this State on the starting date of retail competition.

b. Each electric public utility shall comply with the schedule for the implementation of retail

choice established pursuant to subsection a. of this section. The board shall have the authority to require each electric public utility to submit a restructuring filing, with elements deemed necessary by the board, which shall include the mechanisms by which it will comply with the schedule for implementation of retail choice established pursuant to subsection a. of this section and with the other provisions of this act. Such filing shall be reviewed and, after notice and hearing, may be approved, rejected or modified by the board, and the board may take such additional actions as it deems necessary to enforce compliance with this act.

C.48:3-54 Offering of customer account services on regulated basis.

6. a. An electric public utility may continue to offer customer account services on a regulated basis subsequent to the effective date of this act. Not later than three months after the starting date for the implementation of retail choice for any public utility as determined by the board pursuant to subsection a. of section 5 of this act, the board shall initiate a formal proceeding to investigate the manner and mechanics by which customers are afforded the opportunity to contract with the incumbent utility or an electric power supplier for customer account services and to establish the necessary standards for safety, reliability and testing for meters and information exchange protocols applicable to both electric power suppliers and incumbent utilities that will permit customers to choose a supplier for some or all such customer account services. The board shall issue an order for providing customers the opportunity to choose a supplier for some or all customer account services not later than one year from the starting date of retail competition as provided for in subsection a. of section 5 of this act and setting forth the manner, mechanics and standards for competitive customer account services. The board shall require that electric public utilities, in the continued regulated provision of customer account services, not take actions that would unreasonably impede a transition to a competitive customer account service market. Notwithstanding any other provision of this act to the contrary, an electric power supplier may, upon written consent from a customer, bill the customer directly for generation services and other services it provides to the customer as of the starting date for implementation of retail choice. The board shall ensure that the standards and protocols for electronic data exchange needed to support this option are adopted and are implemented by electric public utilities in a timely manner.

b. A gas public utility may continue to offer customer account services on a regulated basis subsequent to the effective date of this act. Not later than three months after the starting date for the implementation of retail choice established pursuant to section 10 of this act, the board shall initiate a formal proceeding to investigate the manner and mechanics by which customers are afforded the opportunity to contract with by the incumbent utility or gas supplier and to establish the necessary standards for safety, reliability and testing for meters and information exchange protocols applicable to both gas suppliers and incumbent utilities that will permit customers to choose a supplier for some or all such customer account services. The board shall issue an order for providing customers the opportunity to choose a supplier for some or all customer account services not later than December 31, 2000 and setting forth the manner, mechanics and standards for competitive customer account services. The board shall require that gas public utilities, in the continued regulated provision of customer account services, not take actions which would unreasonably impede a transition to a competitive customer account service market. Notwithstanding any other provision of this act to the contrary, a gas supplier may, upon written consent from a customer, bill the customer directly for gas supply service and other services it provides to the customer on and after the first billing which comports with the provisions of section 10 of this act pertaining to the provision of basic gas supply service. The board shall ensure that the standards and protocols for electronic data exchange needed to support this option are adopted and are implemented by gas public utilities in a timely manner.

c. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim technical standards to ensure the safety, reliability and accuracy of metering equipment provided to electric or gas customers and to establish protocols for the exchange of information related to the provision of customer account services.

C.48:3-55 Competitive service to retail customers requires board approval.

7. a. An electric public utility or a related competitive business segment of an electric public utility shall not offer any competitive service to retail customers within this State without the prior express written approval of the board. The board shall require that an electric public utility file and maintain tariffs for competitive services, which tariffs shall be subject to review and approval by the board. The board shall approve a competitive service only upon a finding that:

(1) The provision of a competitive service by an electric public utility or its related competitive business segment shall not adversely impact the ability of the electric public utility to offer its non-competitive services to customers in a safe, adequate and proper manner, and in all instances where resources are jointly deployed by the utility to provide competitive and non-competitive services and resource constraints arise, the provision of non-competitive services shall receive a higher priority; and

(2) The price which an electric public utility charges for a competitive service shall not be less than the fully allocated cost of providing such service, as determined by the board, which cost shall include an allocation of the cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing such competitive service.

b. The board shall apply 50 percent of the net revenues earned from the offering of competitive services by an electric public utility or its related competitive business segment, or from the offering of competitive services by an electric public utility holding company or its related competitive business segment when the provision of such services utilizes affiliated electric public utility assets, including, but not limited to, equipment and personnel, unless the board finds that the electric public utility will receive and reflect such receipt as an offset to its regulated rates the full market value for the use of such assets pursuant to a contract between the parties filed with the board by the electric public utility and subject to the provisions of this section and section 8 of this act:

(1) To offset any market transition charge or equivalent rate mechanism assessed to customers pursuant to section 13 of this act; or

(2) If the electric public utility is not assessing a market transition charge, to offset the rates charged to customers for distribution service, except that such offset shall cease to be required after the term of the transition bond charge has expired as provided in paragraph (1) of subsection d. of section 14 of this act.

c. For the purposes of subsection b. of this section the following shall not constitute the utilization of electric public utility assets:

(1) movement or delivery of power pursuant to a federally-regulated open access tariff over transmission facilities owned by the electric public utility;

(2) movement or delivery of power pursuant to board regulated tariffs over distribution facilities owned by the electric public utility; and

(3) shared corporate overhead or administrative services subject to the provisions of section 8 of this act.

d. Pursuant to rules and regulations to be adopted by the board, the transfer of electric public utility assets from an electric public utility to a related competitive business segment of that electric public utility or of a public utility holding company, other than in the ordinary course of business, shall require board approval, and shall be recorded at full value as determined by the board. Notwithstanding this subsection, no transfer of assets shall affect the whole value of the assessment of the transitional energy facility assessment set forth in P.L.1997, c.162 (C.54:30A-100 et al.).

e. Tariffs for competitive services filed with the board shall be in the public records, except that if the board determines that the rates are proprietary, they shall be filed under seal and made available under the terms of an appropriate protective agreement, as provided by board order. A public utility shall have the burden of proof by affidavit and motions to demonstrate the need for proprietary treatment. The rates shall become public upon board approval.

f. Subject to the approval of the board pursuant to subsection a. of this section, an electric public utility or a related competitive business segment of that electric public utility may provide the following competitive services:

(1) Metering, billing and related administrative services that are deemed competitive by the board pursuant to section 8 of this act;

(2) Services related to safety and reliability of utility businesses;

(3) Competitive services that have been offered by any electric public utility or gas public utility prior to January 1, 1993 or that have been approved by the board prior to the effective date of this act to be offered by any electric public utility or gas public utility. An electric public utility that has offered a competitive service since prior to January 1, 1993 or a competitive service that was approved by the board prior to the effective date of this act is not required to obtain board approval pursuant to subsection a. of this section for that service, but any electric public utility that has not offered a competitive service since prior to January 1, 1993 or has not received previous board approval for such a competitive service shall apply for approval pursuant to subsection a. of this section. Except as otherwise provided by this paragraph, a competitive service that is permitted pursuant to this paragraph shall be subject to all requirements of this act for competitive services and to any standards or other rules or regulations adopted pursuant to this act;

(4) Services that the board determines to be substantially similar to competitive services that are permitted under paragraph (3) of this subsection; and

(5) Competitive services to non-residential customers using existing utility employees.

g. An electric public utility or a related competitive business segment of that electric public utility may provide other services that are offered for nominal or no consideration to existing non-residential customers in the ordinary course of business.

h. An electric public utility shall not use regulated rates to subsidize its competitive services or competitive services offered by a related competitive business segment of the public utility holding company of which the electric public utility is an affiliate, and expenses incurred in conjunction with its competitive services shall not be borne by its regulated rate customers. The regulated rates of an electric public utility shall be subject to the review and approval of the board to determine that there is no subsidization of its related competitive business segment. Each such public utility shall maintain books and records, and provide accounting entries of its regulated business to the board as may be required by the board, to show that there is strict separation and allocation of the utility's revenues, costs, assets, risks and functions, between the electric public utility and its related competitive business segment.

i. Any other provision of this act to the contrary notwithstanding, commencing on the effective date of this act, an electric public utility or a related competitive business segment of that electric public utility shall not offer any competitive service except those approved or pending approval as of July 1, 1998 pursuant to subsections a. and f. of this section.

j. A public utility holding company may offer any competitive service, including, but not limited to, electric generation service, telecommunications service, and cable television service, to retail customers of an electric public utility that is owned by the holding company, but only through a related competitive business segment of the holding company that is not an electric public utility or a related competitive business segment of the electric public utility. Competitive services shall be offered in compliance with all rules and regulations promulgated by the board for carriers of such services, including, but not limited to, telecommunications and cable.

k. Notwithstanding any other provisions of this section, by no later than December 31, 2000, the board shall render a decision, after notice and hearing, on any further restrictions required for any or all non-safety related competitive services offered by an electric public utility in addition to the provisions of this section, including whether an electric public utility offering non-safety related services shall establish and provide such services through a business unit which is functionally separated from the electric public utility business unit.

(1) Upon completion of the audit process required pursuant to paragraph (1) of subsection f. of section 8 of this act, the board shall commence a hearing process to examine the use of utility assets in providing retail competitive services as permitted in subsection f. of this section. The board shall evaluate and balance the following factors: the prevention of cross-subsidization; the issues attendant to separation and relative to the board's affiliate relation and fair competition standards as provided in section 8 of this act; the effect on ratepayers of the use of utility assets in the provision of non-safety related competitive services; the effect on utility

workers; and the effect of utility practices on the market for such services.

(2) The relationship between the electric public utility and its related competitive service business unit shall be subject to affiliate relations standards to be promulgated by the board pursuant to subsection f. of section 8 of this act.

1. If a separate unit is established by the electric public utility as a related competitive business segment of the electric public utility such that other than shared administration and overheads, employees of the competitive services business unit shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide non-competitive utility and safety services, the board shall apply 25 percent of the net revenues:

(1) To offset any market transition charge or equivalent rate mechanism assessed to customers pursuant to section 13 of this act; or

(2) If the electric public utility is not assessing or has eliminated a market transition charge, to offset the rates charged to customers for distribution service, except that such offset shall cease to be required eight years after the start date of retail competition as provided in subsection a. of section 5 of this act.

C.48:3-56 Board shall not regulate certain aspects of competitive services.

8. a. Except as otherwise provided in this act, and notwithstanding any provisions of R.S.48:2-18, R.S.48:2-21, section 31 of P.L.1962, c.198 (C.48:2-21.2), R.S.48:3-1 or any other law to the contrary, the board shall not regulate, fix or prescribe the rates, tolls, charges, rate structures, rate base, or cost of service of competitive services.

b. For the purposes of this act, electric generation service is deemed to be a competitive service.

c. The board is authorized to determine, after notice and hearing, whether any other service offered by an electric public utility is a competitive service. In making such a determination, the board shall develop standards of competitive service which, at a minimum, shall include: evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant market segment and geographic area. Notwithstanding the presence of these factors, the board may determine that any service shall remain regulated for purposes of the public safety and welfare.

d. The board is authorized to determine, after notice and hearing, and after appropriate review by the Legislature pursuant to subsection k. of this section, whether to reclassify as regulated any electric service or segment thereof that it has previously found to be competitive, including electric generation service, if it determines that sufficient competition is no longer present, upon application of the criteria set forth in subsection c. of this section. Upon such a reclassification, subsection a. of this section shall no longer apply and the board shall determine such rates for that electric service which it finds to be just and reasonable. The board, however, shall continue to monitor the electric service or segment thereof and, whenever the board shall find that the electric service has again become sufficiently competitive pursuant to subsection c. of this section, the board shall again apply the provisions of subsection a. of this section.

e. Nothing in this act shall limit the authority of the board, pursuant to Title 48 of the Revised Statutes, to ensure that electric public utilities do not make or impose unjust preferences, discriminations, or classifications for any services provided to customers.

f. (1) The board shall adopt, by rule, regulation or order, such fair competition standards, affiliate relation standards, accounting standards and reports as are necessary to ensure that electric public utilities or their related competitive business segments do not enjoy an unfair competitive advantage over other non-affiliated purveyors of competitive services and in order to monitor the allocation of costs between competitive and non-competitive services offered by an electric public utility, and within 60 days after the starting date for implementation of retail choice pursuant to subsection a. of section 5 of this act, shall commence the process of conducting audits, at the expense of the electric public utilities, to ensure compliance with this section and section 7 of this act and with the board's rules, regulations and orders adopted pursuant to this section and section 7 of this act. The board shall hire an independent contractor to perform such audits.

(2) Subsequent audits shall take place no less than every two years after the date of the decision rendered pursuant to subsection k. of section 7 of this act.

(3) The public utility or an intervenor shall have the right to contest the methodology and rebut the findings of an audit performed pursuant to this subsection, in a filing with the board. The board shall take no action to functionally separate, structurally separate or require the divestiture of any portion of a public utility's operations pursuant to this subsection until the public utility, and any intervenors, have been afforded timely opportunity to make such filing and until the board has issued a decision thereon.

(4) If the board finds, as a result of any such audit, that substantial violations of this act or of the board's rules, regulations or orders adopted pursuant to this section and section 7 of this act have occurred which result in unfair competitive advantages for an electric public utility, it shall: order the electric public utility to establish and provide such services through a business unit which is functionally separated from the electric public utility business unit as a related competitive business segment of the utility, such that, other than shared administration and overheads, employees of the competitive services business unit shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide noncompetitive utility and safety services; order the electric public utility to establish and provide such services through a structurally separate business unit or units including, but not limited to, a related competitive business segment of the public utility holding company; or order the electric public utility to divest itself of any business units that provide such services.

(5) If the board determines, as a result of the audit performed pursuant to this subsection that an electric public utility has unfairly allocated costs between its competitive and non-competitive services, the board is authorized to require such utility to return to the ratepayers an amount, equivalent to the amount of the costs determined to be unfairly allocated, with interest, during the time that the unfair allocation of costs occurred. In addition, the board is authorized to order such utility to pay a fine of up to \$10,000 as a result of the violation or violations determined to have occurred pursuant to this subsection.

(6) Notwithstanding any requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, such fair competition and accounting standards as are necessary on an interim basis to implement retail electric choice. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

g. The board shall determine, by rule or order, what reports are necessary to monitor the competitiveness of any service offered to a customer of an electric public utility.

h. The board shall have the authority to take appropriate increasingly stringent action, including the issuance of an order that an electric public utility or its related competitive business segment cease the offering of a competitive service, functionally separate or structurally separate its competitive service offering from non-competitive business functions, or divest itself of such services, in the event that the board determines, after hearing, that recurring and significant violations of its rules or orders adopted pursuant to subsection f. of this section have occurred.

i. Nothing in this act shall exempt an electric public utility from obtaining all applicable local, State and federal licenses or permits associated with the offering of competitive services and complying with all applicable laws and regulations regarding the provision of such services.

j. If the board finds, as a result of any audit conducted pursuant to this section, that violations of the board's rules, regulations or orders adopted pursuant to this section and section 7 of this act have occurred, which are not substantial violations, the board is authorized to impose a fine of up to \$10,000 against the electric public utility.

k. Prior to reclassifying as regulated any service it previously found to be competitive, the board shall make recommendations to the Legislature concerning the proposed reclassification. The recommendations shall be deemed to be approved unless the Legislature adopts a concurrent resolution stating that the Legislature is not in agreement with all or any part of the

recommendations within 90 days following the date of transmittal of the recommendations to the Legislature. The concurrent resolution shall advise the board of the Legislature's specific objections to the recommendations and shall direct the board to submit revised recommendations which respond to those objections within 45 days of the date of transmittal of the concurrent resolution to the board.

C.48:3-57 Electric public utility to provide basic generation service.

9. a. Simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act, and for at least three years subsequent and thereafter until the board specifically finds it to be no longer necessary and in the public interest, each electric public utility shall provide basic generation service. Power procured for basic generation service by an electric public utility shall be purchased, at prices consistent with market conditions. The charges assessed to customers for basic generation service shall be regulated by the board and shall be based on the reasonable and prudent cost to the utility of providing such service, including the cost of power purchased at prices consistent with market conditions by the electric public utility in the competitive wholesale marketplace and related ancillary and administrative costs, as determined by the board. The board shall approve unbundled rates to assure that aggregate rate reductions established pursuant to section 4 of this act are sustained notwithstanding changes in basic generation charges approved pursuant to this section.

b. The board may allow an electric public utility to purchase power for basic generation service through a bilateral contract from a related competitive business segment of its public utility holding company only if:

(1) The related competitive business segment is not a related competitive business segment of the electric public utility; and

(2) The board determines that the procurement of power from the related competitive business segment of the public utility holding company is necessary in order to ensure the reliability of service to basic generation service customers or to address other extraordinary circumstances, and that the purchase price does not exceed the market price for such power or the power was procured through a competitive bid process subject to board review and approval. The board shall require that all net revenues derived from such sales, when the source of power is assets or contracts which costs are included in stranded costs recovery charges assessed pursuant to sections 13 and 14 of this act, shall be applied:

(a) To offset any market transition charge or equivalent rate mechanism assessed to customers pursuant to section 13 of this act; or

(b) If the electric public utility is not assessing a market transition charge, to offset the rates charged to customers for distribution service, except that such offset shall cease to be required after the term of the transition bond charge has expired as provided in paragraph (1) of subsection d. of section 14 of this act.

(3) The board may devise an alternative accounting or cost recovery process that permits an electric public utility to purchase power from a related competitive business segment of its public utility holding company, or otherwise, to provide basic generation service to its customers during the period that the electric public utility is providing for sustainable rate reductions pursuant to subsection j. of section 4 of this act and subsection a. of this section, if the board determines that such process is necessary to mitigate the impacts of market price fluctuations and to sustain such rate reductions.

c. No later than three years after the starting date of retail competition as provided in subsection a. of section 5 of this act, the board shall issue a decision as to whether to make available on a competitive basis the opportunity to provide basic generation service to any electric power supplier, any electric public utility, or both.

d. Power procured for basic generation service by an electric power supplier shall be purchased at prices consistent with market conditions. The charges assessed to customers for basic generation service shall be regulated by the board and shall be based on the reasonable and prudent cost to the supplier of providing such service, including the cost of power purchased at prices consistent with market conditions, by the supplier in the competitive wholesale

marketplace and related ancillary and administrative costs, as determined by the board or shall be based upon the result of a competitive bid.

e. Each electric public utility or electric power supplier that provides basic generation service pursuant to subsection a., c. or d. of this section shall be permitted to recover in its basic generation charges on a full and timely basis all reasonable and prudently incurred costs incurred in the provision of basic generation services consistent with the provisions of this section, except to the extent that certain costs related to the provision of basic generation service are already being recovered in other elements of an electric public utility's charges. The board may approve ratemaking and other pricing mechanisms that provide incentives, including financial risks and rewards, for the utility or electric power supplier to procure a portfolio of electric power supply that provides maximum benefit to basic generation service customers.

f. Each electric public utility shall submit a quarterly report to the board of all electricity generation contracts between the public utility and any related competitive business segment. A utility that submits a report pursuant to this subsection may petition the board for confidential treatment as trade secrets of any or all of the information provided.

g. Nothing in this section shall apply to any existing board approved bilateral power purchase contract by an electric public utility as of the effective date of this act.

C.48:3-58 Gas public utilities, unbundled rate schedules.

10. a. After the implementation of retail electric choice pursuant to subsection a. section 5 of this act, the board shall order each gas public utility to unbundle its rate schedules such that discrete services provided, which were previously included in the bundled utility rate, are separately identified and charged in its tariffs. Billing for unbundled services also shall include charges for regulatory assets and may include restructuring related costs. The board shall order each gas public utility to submit a rate unbundling filing no later than May 1, 1999, in a form and of a content to be determined by the board. The board shall review such filings and, after hearing and an opportunity for public comment, render a determination as to the appropriate unbundled rates consistent with the provisions of this act. Notwithstanding any other provisions of this act, an unbundling of gas public utility rates implemented as a result of this section shall not result in a reallocation of utility cost responsibility between or among different classes of customers. The board shall continue to allow commercial and industrial customers to choose a gas supplier and shall order that all retail customers of a gas public utility shall be able to choose a gas supplier by no later than December 31, 1999, except that the board may approve an accelerated schedule for retail gas customer choice.

b. Subject to the approval of the board pursuant to subsection d. of this section, a gas public utility or a related competitive business segment of that gas public utility may provide the following competitive services:

(1) Metering, billing and related administrative services that are deemed competitive by the board pursuant to this section;

(2) Services related to safety and reliability of utility businesses;

(3) Competitive services that have been offered by any electric or gas public utility since prior to January 1, 1993 or that have been approved by the board prior to the effective date of this act to be offered by any electric public utility or gas public utility. A gas public utility that has offered a competitive service since prior to January 1, 1993 or a competitive service that was approved prior to the effective date of this act is not required to obtain board approval pursuant to subsection d. of this section, but any gas public utility that has not offered a competitive service prior to January 1, 1993 or has not received previous board approval for such a competitive service shall apply for approval pursuant to subsection d. of this section. Except as otherwise provided by this paragraph, a competitive service that is permitted by this paragraph shall be subject to all requirements of this act for competitive services and to any standards or other rules or regulations adopted pursuant to this act;

(4) Services that are substantially similar to competitive services that are permitted under paragraph (3) of this subsection; and

(5) Competitive services to non-residential customers using utility employees and assets.

c. A gas public utility or a related competitive business segment of that gas public utility may provide other services that are offered for nominal or no consideration to existing non-residential customers in the ordinary course of business.

d. A gas public utility shall not offer any competitive service to retail customers without the express prior written approval of the board. The board may require that a gas public utility file and maintain tariffs for competitive services, which tariffs shall be subject to review and approval by the board. The board shall approve a competitive service only upon a finding that:

(1) The provision of a competitive service by a gas public utility or its related competitive business segment shall not adversely impact the ability of the gas public utility to offer its non-competitive services to customers in a safe, adequate and proper manner, and in all instances where resources are jointly deployed by the utility to provide competitive and non-competitive services and resource constraints arise, the provision of non-competitive services shall receive a higher priority; and

(2) The price that a gas public utility charges for a competitive service shall not be less than the fully allocated cost of providing such service, as determined by the board, which cost shall include an allocation of the cost of all equipment, vehicles, labor, related fringe benefits and overheads, and administration utilized, and all other assets utilized and costs incurred, directly or indirectly, in providing such competitive service.

e. Tariffs for competitive services filed with the board shall be in the public records, except that if the board determines that the rates are proprietary, they shall be filed under seal and made available under the terms of an appropriate protective agreement, as provided by board order. A public utility shall have the burden of proof by affidavit and motions to demonstrate the need for proprietary treatment. The rates shall become public upon board approval.

f. A gas public utility shall not use regulated rates to subsidize its competitive services or competitive services offered by a related competitive business segment of the public utility holding company of which the public utility is an affiliate, and expenses incurred in conjunction with its competitive services shall not be borne by its regulated rate customers. The regulated rates of a gas public utility shall be subject to the review and approval of the board to determine that there is no subsidization of its related competitive business segment. Each such public utility shall maintain books and records, and provide accounting entries of its regulated business to the board as required by the board, to show that there is strict separation and allocation of the utility's revenues, costs, assets, risks and functions, between the gas public utility and its related competitive business segment.

g. Except as otherwise provided in this act, and notwithstanding any provisions of R.S.48:2-18, R.S.48:2-21, section 31 of P.L.1962, c.198 (C.48:2-21.2), R.S.48:3-1 or any other law to the contrary, the board shall not regulate, fix or prescribe the rates, tolls, charges, rate structures, rate base, or cost of service of competitive services.

h. The board is authorized to determine, after notice and hearing, whether any service offered by a gas public utility is a competitive service. In making such a determination, the board shall develop standards of competitive service which, at a minimum, shall include: evidence of ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area. Notwithstanding the presence of these factors, the board may determine that any service shall remain regulated for purposes of the public safety and welfare.

i. The board shall have the authority to reclassify as regulated any gas service or segment thereof that it has previously found to be competitive, if, after notice and hearing, and after appropriate review by the Legislature pursuant to subsection v. of this section, it determines that sufficient competition is no longer present, upon application of the criteria set forth in subsection h. of this section. Upon such a reclassification, subsection g. of this section shall no longer apply and the board shall determine such rates for that gas service as it finds to be just and reasonable. The board, however, shall continue to monitor the gas service or segment thereof and, whenever the board shall find that the gas service has again become sufficiently competitive pursuant to subsection h. of this section, the board shall again apply the provisions of subsection g. of this section.

j. Nothing in this act shall limit the authority of the board, pursuant to Title 48 of the

Revised Statutes, to ensure that gas public utilities do not make or impose unjust preferences, discriminations, or classifications for any services provided to customers.

k. (1) The board shall adopt, by rule, regulation or order, such fair competition standards, affiliate relation standards, accounting standards and reports as are necessary to ensure that gas public utilities or their related competitive business segments do not enjoy an unfair competitive advantage over other non-affiliated purveyors of competitive services and in order to monitor the allocation of costs between competitive and non-competitive services offered by a gas public utility, and within 60 days after the date for implementation of retail choice pursuant to this section, shall commence the process of conducting audits, at the expense of the gas public utilities, to ensure compliance with this section and with the board's rules, regulations or orders adopted pursuant to this section. The board shall hire an independent contractor to perform such audits.

(2) Subsequent audits shall take place no less than every two years after the date of the decision rendered pursuant to subsection q. of this section.

(3) The public utility and an intervenor shall have the right to contest the methodology and rebut the findings of an audit performed pursuant to this subsection, in a filing with the board. The board shall take no action to functionally separate, structurally separate or require the divestiture of any portion of a public utility's operations pursuant to this subsection until the public utility, and any intervenors have been afforded timely opportunity to make such filing and until the board has issued a decision thereon.

(4) If the board finds as a result of any such audit, that substantial violations of this act or of the board's rules, regulations or orders adopted pursuant to this section have occurred which result in unfair competitive advantages for a gas public utility, it shall: order the gas public utility to establish and provide such services through a business unit which is functionally separated from the gas public utility business unit as a related competitive business segment of the utility, such that, other than shared administration and overheads, employees of the competitive services business unit shall not also be involved in the provision of non-competitive utility and safety services, and the competitive services are provided utilizing separate assets than those utilized to provide non-competitive utility and safety services; order the gas public utility to establish and provide such services through a structurally separate business unit or units including, but not limited to, a related competitive business segment of the public utility holding company; or order the gas public utility to divest itself of any business units that provide such services.

(5) If the board determines, as a result of the audit performed pursuant to this subsection that a gas public utility has unfairly allocated costs between its competitive and non-competitive services, the board is authorized to require such utility to return to the ratepayers an amount, equivalent to the amount of the costs determined to be unfairly allocated, with interest, during the time that the unfair allocation of costs occurred. In addition, the board is authorized to order such utility to pay a fine of up to \$10,000 as a result of the violation or violations determined to have occurred pursuant to this subsection.

l. The board shall determine, by rule or order, what reports are necessary to monitor the competitiveness of any service offered to a customer of a gas public utility.

m. The board shall have the authority to take appropriate action, including the issuance of an order that a gas public utility or its related competitive business segment cease the offering of a competitive service, functionally separate its competitive service offering from non-competitive business functions, structurally separate or divest itself of such services, in the event that the board determines, after hearing, that recurring and significant violations of its rules, regulations or orders adopted pursuant to subsection k. of this section have occurred.

n. Any other provision of this act to the contrary notwithstanding, commencing on the effective date of this act, a gas public utility or a related competitive business segment of that gas public utility shall not offer any competitive service except those approved or pending approval as of July 1, 1998 pursuant to subsections b. and d. of this section; provided, however, that in the event that a gas public utility is not part of a holding company legal structure, competitive services may be offered by a related competitive business segment of that gas public utility as long as that related competitive business segment is structurally separated from the gas

public utility, and provided that the interactions between the gas public utility and the related competitive business segment are subject to the affiliate relation standards adopted by the board pursuant to subsection k. of this section.

o. A public utility holding company may offer a gas competitive service to retail customers of a gas public utility that is owned by the holding company, but only through a related competitive business segment of the holding company that is not a related competitive business segment of the gas public utility; provided, however, that in the event that a gas public utility is not part of a holding company legal structure, competitive services may be offered by a related competitive business segment of that gas public utility as long as that related competitive business segment is structurally separated from the gas public utility, and provided that interactions between the gas public utility and the related competitive business segment are subject to the affiliate relation standards adopted by the board pursuant to subsection k. of this section.

p. Nothing in this act shall exempt a gas public utility from obtaining all applicable local, State and federal licenses or permits associated with the offering of competitive services and complying with all applicable laws and regulations regarding the provision of such services.

q. Notwithstanding any other provisions of this section, by no later than December 31, 2000, the board shall render a decision, after notice and hearing, on any further restrictions required for any or all non-safety related competitive services offered by a gas public utility in addition to the provisions of this section, including whether a gas public utility offering non-safety related services must establish and provide such services through a business unit which is functionally separated from the gas public utility business unit.

(1) Upon the completion of the audit process required by paragraph (1) of subsection k. of this section, the board shall initiate the process of organizing and conducting hearings to examine the use of utility assets in providing retail competitive services as permitted in subsection f. of this section. The board shall evaluate and balance the following factors: the prevention of cross subsidization, the issues attendant to separation and relative to the board's affiliate relation and fair competition standards as provided in subsection k. of this section, the effect on ratepayers of the use of utility assets in the provision of non-safety related competitive services, the effect on utility workers, and the effect of utility practices on the market for such services.

(2) The relationship between the gas public utility and its related competitive service business unit shall be subject to affiliate relations standards to be promulgated by the board pursuant to subsection k. of this section.

r. For at least three years subsequent to the starting date of 100 percent retail competition as provided in subsection a. of this section and thereafter until the board specifically finds it to be no longer in the public interest, each gas public utility shall provide basic gas supply service. Gas supply procured for basic gas supply service by a gas public utility shall be purchased at prices consistent with market conditions. The charges assessed to customers for basic gas supply service shall be regulated by the board and shall be based on the cost to the utility of providing such service, including the cost of gas commodity and capacity purchased at prices consistent with market conditions by the gas public utility in the competitive wholesale marketplace and related ancillary and administrative costs, as determined by the board. A gas supply service offered by a gas public utility under a tariff approved by the board as of the effective date of this act shall qualify for the provision of basic gas supply service required hereunder.

s. By no later than January 1, 2002, the board shall issue a decision as to whether to make available basic gas service on a competitive basis to any gas supplier, any gas public utility, or both.

t. Gas procured for basic gas supply service by a gas supplier shall be purchased at prices consistent with market conditions. The charges assessed to customers for basic gas service shall be regulated by the board and shall be based on the cost to the supplier of providing such service, including the cost of gas commodity and capacity purchased at prices consistent with market conditions by the supplier in the competitive wholesale marketplace and related ancillary

and administrative costs, as determined by the board or shall be based upon the result of a competitive bid.

u. Each gas public utility or gas supplier that provides basic gas supply service pursuant to subsections r., s. and t. of this section shall be permitted to recover in its basic gas supply charges on a full and timely basis all reasonable and prudently incurred costs incurred in the provision of basic gas supply services pursuant to this section, except to the extent that certain costs related to the provision of basic gas supply service are already being recovered in other elements of a gas public utility's charges. The board may approve ratemaking and other pricing mechanisms that provide incentives, including financial risks and rewards, for the gas public utility or gas supplier to procure a portfolio of gas supply that provides maximum benefit to basic gas supply service customers.

v. Prior to reclassifying as regulated, pursuant to subsection i. of this section, any service previously found to be competitive, the board shall make recommendations to the Legislature concerning the proposed reclassification. The recommendations shall be deemed to be approved unless the Legislature adopts a concurrent resolution stating that the Legislature is not in agreement with all or any part of the recommendations within 90 days following the date of transmittal of the recommendations to the Legislature. The concurrent resolution shall advise the board of the Legislature's specific objections to the recommendations and shall direct the board to submit revised recommendations which respond to those objections within 45 days of the date of transmittal of the concurrent resolution to the board.

w. If the board finds, as a result of any audit conducted pursuant to this section, that violations of the board's rules, regulations or orders adopted pursuant to this section have occurred, which are not substantial violations, the board is authorized to impose a fine of up to \$10,000 against the gas public utility.

C.48:3-59 Requirements for electric public utility after retail choice.

11. a. On or after the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act and for the duration of the transition charges established pursuant to subsection i. of section 13 and subsection a. of section 14 of this act, the board may require that an electric public utility either:

(1) Functionally separate its non-competitive business functions from its competitive electric generation service or its electric power generator functions so that such services or functions are provided by a related competitive business segment of the public utility or the public utility holding company. A related competitive business segment of the public utility holding company that is providing competitive electric generation services or performing electric power generator functions shall not be considered a public utility for the purposes of regulation under Title 48 of the Revised Statutes or any other State law or rule or regulation, except that the interrelationships between the related competitive business segment and the electric public utility shall be subject to board authority and oversight consistent with the provisions of this section; or

(2) Divest to an unaffiliated company all or a portion of its electric generation assets and operations, upon a finding by the board, that such divestiture is necessary because the concentration or location of electric generation facilities under the electric public utility's ownership or control enable it to exercise market control that adversely affects the formation of a competitive electricity generation market and adversely affects retail electric supply customers by enabling the electric public utility or its related competitive business segment to gain an unfair competitive advantage or otherwise charge non-competitive prices.

b. Prior to the commencement by an electric public utility or a related competitive business segment of an electric public utility of any solicitation of bids for the sale of generating assets subject to recovery pursuant to sections 13 and 14 of this act or of the public utility holding company of any solicitation of bids for the sale of generating assets which have not been previously approved by the board for transfer from the electric public utility to the electric public utility holding company and are subject to recovery pursuant to sections 13 and 14 of this act, whether ordered by the board or not, the board shall establish standards for the conduct of such sale by the utility. Such standards shall include provisions for the board to monitor the progress

of the bid process to ensure that the process is conducted by parties acting in their own best interest and in a manner designed to ensure a fair market value determination and does not unreasonably preclude participation by prospective purchasers. An order by the board, pursuant to paragraphs (1) and (2) of subsection a. of this section, ordering a public utility to functionally separate or divest its competitive services to a related competitive business segment of the public utility, a public utility, a public utility holding company or an unaffiliated company shall include a provision that the related competitive business segment of the public utility, public utility holding company or unaffiliated company shall:

(1) Recognize the existing employee bargaining unit and shall continue to honor and abide by an existing collective bargaining agreement for the duration of the agreement. The new entity shall be required to bargain in good faith with the existing collective bargaining unit when the existing collective bargaining agreement has expired;

(2) Shall hire its initial employee complement from among qualified employees of the electric public utility employed at the generating facility at the time of the functional separation or divestiture; and

(3) Continue such terms and conditions of employment of employees as are in existence at the generating facility at the time of the functional separation or divestiture.

c. Prior to completing any sale of generating assets subject to recovery pursuant to sections 13 and 14 of this act, an electric public utility shall file for and obtain approval by the board of the sale. The board shall approve the filing, subject to the provisions of subsection d. of this section, if it finds that:

(1) The sale reflects the full market value of the assets;

(2) The sale is otherwise in the best interest of the electric public utility's ratepayers;

(3) The sale will not jeopardize the reliability of the electric power system;

(4) The sale will not result in undue market control by the prospective buyer;

(5) The impacts of the sale on the utility's workers have been reasonably mitigated;

(6) The sale process is consistent with standards established by the board pursuant to subsection b. of this section;

(7) The sale, merger, or acquisition of the generation or other utility assets includes a provision that the purchasing, merging or new entity shall recognize the existing employee bargaining unit and shall continue to honor and abide by any existing collective bargaining agreement for the duration of the agreement. The new entity shall be required to bargain in good faith with the existing collective bargaining unit when the existing collective bargaining agreement has expired;

(8) The sale, merger, or acquisition of the generation or other utility assets includes a provision that the purchasing, merging or new entity shall hire its initial employee complement from among the employees of the electric public utility employed at the generating facility at the time of the sale, merger or acquisition; and

(9) The sale, merger or acquisition of the generation or other utility assets includes a provision that the purchasing, merging or new entity shall continue such terms and conditions of employment of employees as are in existence at the generating facility at the time of the sale, merger or acquisition.

d. Whenever an electric public utility sells generating assets subject to recovery pursuant to sections 13 and 14 of this act and the net proceeds from such sale exceed the level of market value used in determining the level of stranded costs being recovered through a market transition charge or equivalent rate mechanism established pursuant to section 13 of this act, the board shall require that all such excess revenues derived by the electric public utility or its related competitive business segment from that sale be applied:

(1) To offset any market transition charge or equivalent rate mechanism assessed to customers pursuant to section 13 of this act; or

(2) If the electric public utility is not assessing a market transition charge, to offset the rates charged to customers for distribution service.

e. Notwithstanding this subsection no transfer of assets shall affect the whole value of the assessment of the transitional energy facility assessment set forth in P.L.1997, c.162 (C.54:30A-100 et seq.).

C.48:3-60 Societal benefits charge by public utility; Universal Service Fund.

12. a. Simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act, the board shall permit each electric public utility and gas public utility to recover some or all of the following costs through a societal benefits charge that shall be collected as a non-bypassable charge imposed on all electric public utility customers and gas public utility customers, as appropriate:

(1) The costs for the social programs for which rate recovery was approved by the board prior to April 30, 1997. For the purpose of establishing initial unbundled rates pursuant to section 4 of this act, the societal benefits charge shall be set to recover the same level of social program costs as is being collected in the bundled rates of the electric public utility on the effective date of this act. The board may subsequently order, pursuant to its rules and regulations, an increase or decrease in the societal benefits charge to reflect changes in the costs to the utility of administering existing social programs. Nothing in this act shall be construed to abolish or change any social program required by statute or board order or rule or regulation to be provided by an electric public utility. Any such social program shall continue to be provided by the utility until otherwise provided by law, unless the board determines that it is no longer appropriate for the electric public utility to provide the program, or the board chooses to modify the program;

(2) Nuclear plant decommissioning costs;

(3) The costs of demand side management programs that were approved by the board pursuant to its demand side management regulations prior to April 30, 1997. For the purpose of establishing initial unbundled rates pursuant to section 4 of this act, the societal benefits charge shall be set to recover the same level of demand side management program costs as is being collected in the bundled rates of the electric public utility on the effective date of this act. Within four months of the effective date of this act, and every four years thereafter, the board shall initiate a proceeding and cause to be undertaken a comprehensive resource analysis of energy programs, and within eight months of initiating such proceeding and after notice, provision of the opportunity for public comment, and public hearing, the board, in consultation with the Department of Environmental Protection, shall determine the appropriate level of funding for energy efficiency and Class I renewable energy programs that provide environmental benefits above and beyond those provided by standard offer or similar programs in effect as of the effective date of this act; provided that the funding for such programs be no less than 50% of the total Statewide amount being collected in public electric and gas utility rates for demand side management programs on the effective date of this act for an initial period of four years from the issuance of the first comprehensive resource analysis following the effective date of this act, and provided that 25% of this amount shall be used to provide funding for Class I renewable energy projects in the State. In each of the following fifth through eighth years, the Statewide funding for such programs shall be no less than 50 percent of the total Statewide amount being collected in public electric and gas utility rates for demand side management programs on the effective date of this act, except that as additional funds are made available as a result of the expiration of past standard offer or similar commitments, the minimum amount of funding for such programs shall increase by an additional amount equal to 50 percent of the additional funds made available, until the minimum amount of funding dedicated to such programs reaches \$140,000,000 total. After the eighth year the board shall make a determination as to the appropriate level of funding for these programs. Such programs shall include a program to provide financial incentives for the installation of Class I renewable energy projects in the State, and the board, in consultation with the Department of Environmental Protection, shall determine the level and total amount of such incentives as well as the renewable technologies eligible for such incentives which shall include, at a minimum, photovoltaic, wind, and fuel cells. The board shall simultaneously determine, as a result of the comprehensive resource analysis, the programs to be funded by the societal benefits charge, the level of cost recovery and performance incentives for old and new programs and whether the recovery of demand side management programs' costs currently approved by the board may be reduced or extended over a longer period of time. The board shall make these determinations taking into consideration existing market barriers and environmental benefits, with the objective of transforming markets, capturing

lost opportunities, making energy services more affordable for low income customers and eliminating subsidies for programs that can be delivered in the marketplace without electric public utility and gas public utility customer funding;

(4) Manufactured gas plant remediation costs, which shall be determined initially in a manner consistent with mechanisms in the remediation adjustment clauses for the electric public utility and gas public utility adopted by the board; and

(5) The cost, of consumer education, as determined by the board, which shall be in an amount that, together with the consumer education surcharge imposed on electric power supplier license fees pursuant to subsection h. of section 29 of this act and the consumer education surcharge imposed on gas supplier license fees pursuant to subsection g. of section 30 of this act, shall be sufficient to fund the consumer education program established pursuant to section 36 of this act.

b. There is established in the Board of Public Utilities a nonlapsing fund to be known as the "Universal Service Fund." The board shall determine: the level of funding and the appropriate administration of the fund; the purposes and programs to be funded with monies from the fund; which social programs shall be provided by an electric public utility as part of the provision of its regulated services which provide a public benefit; whether the funds appropriated to fund the "Lifeline Credit Program" established pursuant to P.L.1979, c.197 (C.48:2-29.15 et seq.), the "Tenants' Lifeline Assistance Program" established pursuant to P.L.1981, c.210 (C.48:2-29.31 et seq.), the funds received pursuant to the Low Income Home Energy Assistance Program established pursuant to 42 U.S.C. s. 8621 et seq., and funds collected by electric and natural gas utilities, as authorized by the board, to off-set uncollectible electricity and natural gas bills should be deposited in the fund; and whether new charges should be imposed to fund new or expanded social programs.

C.48:3-61 Market transition charge for stranded costs.

13. a. The provisions of R.S.48:2-21 or any other law to the contrary notwithstanding, and simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of this act, the board shall, pursuant to the findings made in connection with the stranded cost filing under subsection c. of this section and the related stranded costs recovery order, permit each electric public utility the opportunity to recover the following categories of costs through a market transition charge that shall be collected as a limited duration non-bypassable charge payable by all of the electric public utility's customers, except as provided pursuant to section 28 of this act:

(1) Utility generation plant stranded costs;

(2) Stranded costs related to long-term and short-term power purchase contracts with other utilities, including buydowns and buyouts of such contracts and interim debt, the issuance of which has been approved by the board, issued to effectuate the buydown or buyout of such contracts;

(3) Stranded costs related to long-term power purchase contracts with non-utility generators, including buydowns and buyouts of such contracts and interim debt issued to effectuate the buydown or buyout of such contracts, and the costs of new power contracts approved by the board which are the result of the renegotiation, restructuring or termination of previous non-utility generator power purchase contracts pursuant to subsection l. of this section; and

(4) Such restructuring related costs, if any, as the board determines to be appropriate for recovery in a market transition charge.

b. Costs that may be collected pursuant to subsection a. of this section must be otherwise unrecoverable as a direct result of the implementation of retail choice mandated by subsection a. of section 5 of this act.

c. In order for an electric public utility to have a market transition charge established it must submit a stranded cost filing to the board, the elements of which are to be established by the board. After notice and hearing, the board may approve, reject or approve with modifications the filing as it deems necessary and appropriate to comply with the provisions of this act and shall thereafter issue a stranded cost recovery order setting forth the amount of stranded costs,

if any, eligible to be recovered by such electric public utility. The order or a successor order also shall set forth the board authorized mechanism to be used by the electric public utility for recovery of stranded costs which the board has determined are eligible for recovery.

d. Costs that may be eligible for recovery pursuant to paragraphs (1) and (2) of subsection a. of this section must have been committed to by the utility and included in rates through the conclusion of the utility's most recent base rate case prior to April 30, 1997, except that the board may determine certain costs that were not previously included in base rates to be eligible upon a showing by the utility that such costs were prudently incurred and either:

(1) were needed to maintain plant integrity, performance or reliability or to meet safety, environmental or other regulatory standards consistent with the utility's obligation to serve; or

(2) in the case of major investments or major upgrades not meeting the standard in subsection a. of this section, the utility demonstrates that it had no more cost-effective power supply source available at the time the commitment was made to meet their energy consumers' needs consistent with applicable board standards and to provide benefits to ratepayers.

e. For the purposes of quantifying the magnitude of stranded costs eligible for recovery via the market transition charge, the board shall require the electric public utility to demonstrate the full market value of each eligible generating asset or power purchase commitment over its remaining useful life or term and, in fixing the level of the market transition charge, the board shall reach a determination as to the market value of such eligible assets and commitments, or implement a mechanism for such value to be determined. Such determination or mechanism shall reflect or provide a means to reflect the full value of the eligible asset or commitment, including value which may not be realized by the electric public utility until after the expiration of the market transition charge, and may reflect a reduced return, if any, on investment in quantifying stranded costs which the board determines to be reasonable given the changes in capital costs or risks to the utility, or to reflect the impaired value of the uneconomic generating assets to ratepayers.

f. For the purposes of quantifying the magnitude of stranded costs eligible for recovery via the market transition charge, the board shall require or impute all reasonably available measures for the electric public utility to mitigate the quantity of stranded costs, by:

(1) Reducing the cost of power purchase commitments and the on-going capital and operations costs of the generating plant;

(2) Maximizing the market value of the generating asset or purchase commitment; or

(3) Undertaking other reasonably achievable cost reductions.

g. The board shall conduct a periodic review and, if necessary, adjust the market transition charge or implement other ratemaking mechanisms in order to ensure that the utility will not collect charges that exceed its actual stranded costs. Net proceeds from the sale or lease of generating assets as provided in subsection d. of section 11 of this act or from the offering of competitive services by the electric public utility or a related competitive business segment of the public utility as provided in subsection b. of section 7 of this act, shall be reflected on a timely basis in the first instance by the adjustment of the market transition charge or equivalent rate mechanism implemented pursuant to this subsection. Any adjustment mechanism shall reflect changes in market price and may reflect other factors such as changes in sales.

h. Notwithstanding the provisions of subsection a. of this section, the board shall not determine a level for the market transition charge for recovery of a utility's eligible stranded costs, as determined in accordance with this section, which prevents the achievement of the rate reductions required pursuant to section 4 of this act and that such rate reductions will not impair the electric public utility's financial integrity such that access to the capital markets for the continued provision of safe, adequate, and proper utility service is impaired.

i. The market transition charge for each utility shall be limited to a term not to exceed eight years, except that the board may extend the term of the charge to allow a utility:

(1) To recover the non-mitigable stranded costs associated with payments under long-term power purchase contracts with non-utility generators over the lives of the contracts;

(2) To recover costs associated with a particular generating asset, the costs of which represent at least 20 percent of an electric public utility's stranded costs as determined by the

board and the remaining life of which for depreciation purposes at April 30, 1997 was 10 years or greater, in which case the board may extend the market transition charge up to three additional years if necessary to achieve the rate reduction levels established by the board pursuant to section 4 of this act; or

(3) To achieve the mandatory rate reductions established pursuant to subsection d. of section 4 of this act if the board determines that such mandatory rate reductions cannot be achieved by a public electric utility absent such extension.

j. The board shall issue orders with respect to each electric public utility's amortization of stranded costs through the market transition charge pursuant to this section prior to the starting date for implementation of retail choice as provided in subsection a. of section 5 of this act.

k. Nothing in this act shall be construed to alter non-utility generator power purchase contracts in existence on the effective date of this act or the board's orders approving said contracts.

l. (1) The board may approve the buyout or buydown of a power purchase agreement with a non-utility generator or a new power purchase contract which is the result of the renegotiation, restructuring or termination of a previous non-utility generator purchase agreement, if it determines that such buyout, buydown or new contract, including any and all transaction costs, will result in a substantial reduction in the total stranded costs of the utility, which resulting savings will be passed through to ratepayers on a full and timely basis.

(2) Each electric public utility shall be permitted to recover the costs of qualified replacement power on a full and timely basis pursuant to section 9 of this act.

(3) Each electric public utility shall be permitted to recover on a full and timely basis through the market transition charge:

(a) all costs of power contract buydowns and buyouts approved by the board which are the result of the renegotiation, restructuring, buyout, buydown or termination of existing non-utility power purchase contracts; and

(b) debt issued to effectuate the board-approved renegotiation, restructuring, buyout, buydown, or termination of existing non-utility power purchase contracts.

(4) The board's approval of any contract renegotiation, restructuring, buyout, buydown, termination or new contract shall not be subject to modification except as requested jointly by the parties to such contracts.

(5) As used in this subsection, "qualified replacement power" is power that the utility purchases subsequent to the board-approved buyout, buydown or renegotiation of a non-utility generator power purchase contract which is necessary to provide basic generation service and in order to replace power not provided as part of the buydown, buyout or new contract, and which is obtained at a cost no higher than that which is available in the market.

C.48:3-62 Authorization for issuance of transition bonds.

14. a. For purposes of recovering a portion of the stranded costs of an electric public utility that are deemed eligible for rate recovery in a stranded cost recovery order consistent with the provisions of section 13 of this act, and for compliance by the electric public utility with the rate reduction requirements determined by the board to be necessary and appropriate consistent with the provisions of sections 4 and 13 of this act, the board may authorize the issuance of transition bonds by the electric public utility or other financing entity approved by the board. Such bonds shall be secured through an irrevocable bondable stranded cost rate order imposing a non-bypassable transition bond charge as provided in section 18 of this act and shall provide for collection of the transition bond charge by the electric public utility or another entity approved by the board. This transition bond charge shall be assessed in connection with the recovery of stranded costs pursuant to section 13 of this act, but each electric public utility shall maintain separate accounting for transition bond charges so that the board can determine, at any time, the amount of each type of charge that has been assessed and collected by the electric public utility. The net proceeds of the transition bonds shall be used by or on behalf of the electric public utility solely for the purposes of reducing the amount of its otherwise recovery-eligible stranded costs, as determined by the board in accordance with the provisions of section 13 of this act, through the refinancing or retirement of electric public utility debt or equity, or both, or the buyout,

buydown or other restructuring of a power purchase agreement if such buyout, buydown or restructuring leads directly to substantial customer benefits over the term of the power purchase agreement. The entire amount of cost savings achieved as a result of the issuance of such transition bonds, whether as a result of a reduction in capital costs or a lengthened recovery period associated with otherwise recovery-eligible stranded costs or as a source of cash for the buyout, buydown or other restructuring of a power purchase agreement, shall be passed on to the customers of the electric public utility in the form of reduced rates for electricity. Anything in this act or any other law to the contrary notwithstanding, except for adjustments authorized under paragraph (2) of subsection a. and subsection b. of section 15 of this act, transition bond charges approved by the board in a bondable stranded costs rate order shall not be offset, reduced, adjusted or otherwise diminished either directly or indirectly.

b. The issuance of transition bonds for an electric public utility may be authorized by the board if all the following findings are made by the board in connection with its review of a stranded cost filing made by an electric public utility pursuant to section 13 of this act:

(1) The electric public utility has taken reasonable measures to date, and has the appropriate incentives or plans in place to take reasonable measures, to mitigate the total amount of its stranded costs;

(2) The electric public utility will not be able to achieve the level of rate reduction deemed by the board to be necessary and appropriate pursuant to the provisions of sections 4 and 13 of this act absent the issuance of transition bonds;

(3) The issuance of such bonds will provide tangible and quantifiable benefits to ratepayers, including greater rate reductions than would have been achieved absent the issuance of such bonds and net present value savings over the term of the bonds; and

(4) The structuring and pricing of the transition bonds assure that the electric public utility's customers pay the lowest transition bond charges consistent with market conditions and the terms of the bondable stranded costs rate order. If so authorized in the financing order by the board, the structure and pricing of the transition bonds shall be conclusively deemed to satisfy this requirement if so certified by a designee of the board upon the pricing of the transition bonds, which certification will be final and uncontestable as of its date.

c. Subject to the other requirements of this section:

(1) The board may authorize the issuance of transition bonds for utility generation plant stranded costs determined by the board to be recoverable pursuant to paragraph (1) of subsection a. of section 13 of this act in a principal amount of up to 75 percent of the total amount of the electric public utility's recovery-eligible utility generation plant stranded costs, as determined by the board in accordance with the provisions of section 13 of this act, or, in the event that an electric public utility divests itself of a majority of its generating assets, which divestiture will result in a lower market transition charge than that which would have been collected from customers had the electric public utility not divested such assets, and the utility has established, as determined by the board, the stranded cost amount with certainty attributable to its remaining generating asset or assets, the board may authorize the issuance of transition bonds in a principal amount up to the full stranded cost value of such remaining generating asset or assets based on the following criteria:

(a) The greater the level of aggregate rate reduction provided pursuant to subsections d. and e. of section 4 of this act, the higher the percentage of stranded costs for which transition bonds may be issued;

(b) The higher the degree of certainty, such as might be obtained by auction or sale of the assets, as to the magnitude of the electric public utility's actual stranded costs, the larger the magnitude of transition bonds which may be permitted; and

(c) Based on evidence on the record, such amount will produce substantial and quantifiable savings for the customers of that utility; and

(2) The board may authorize the issuance of transition bonds for the buyout or buydown of long-term power purchase contracts with non-utility generators determined by the board to be recoverable pursuant to paragraph (3) of subsection a. of section 13 of this act in a principal amount to be determined by the board in accordance with the provisions of section 13 of this act, based on the following criteria:

(a) The greater the level of aggregate rate reduction provided pursuant to subsections d. and e. of section 4 of this act, the higher the percentage of stranded costs that may be securitized;

(b) The higher the degree of certainty as to the magnitude of the electric public utility's actual stranded costs, the larger the magnitude of transition bonds which may be permitted; and

(c) Based on evidence on the record, such amount will produce substantial and quantifiable savings for the customers of that electric public utility because the amount of the buyout or buydown payment is substantially less than the total projected stranded costs associated with the contract.

d. The board may approve transition bonds with scheduled amortization upon issuance of up to:

(1) Fifteen years if the electric public utility intends to utilize the proceeds from such transition bonds to reduce the stranded costs related to utility-owned generation; or

(2) The remaining term of a power purchase agreement if the electric public utility intends to utilize the proceeds from such transition bonds solely for the purposes and requirements of paragraph (2) of subsection c. of this section.

e. Transition bonds for the purpose and requirements of paragraphs (1) and (2) of subsection c. of this section may be issued in one or more series, in one or more offerings, and each such series may consist of one or more classes of transition bonds.

f. The board shall issue orders with respect to each electric public utility's amortization of stranded costs through the transition bond charges pursuant to this section.

C.48:3-64 Bondable stranded costs rate orders.

15. a. A bondable stranded costs rate order issued by the board pursuant to section 14 of this act shall:

(1) Authorize the electric public utility or other financing entity approved by the board to issue transition bonds to finance the bondable stranded costs and to pledge or assign, sell or otherwise transfer the related bondable transition property without further order of the board, except as provided in paragraph (2) of subsection a. of this section;

(2) Approve the amount of the initial transition bond charge to be imposed upon, charged to and collected and received from the customers of the electric public utility in an amount not less than the amount necessary to fully recover bondable stranded costs, and provide for adjustment in a manner approved by the board of the initial transition bond charge prior to the closing of the related transition bonds to reflect the actual rate of interest thereon and all other costs, including any required overcollateralization, associated with the issuance of such transition bonds; and

(3) Require the electric public utility to obtain the approval of the board or its designee at the time of pricing of the terms and conditions of any transition bonds secured by or payable from the transition bond charges, servicing fees, if any, imposed with respect to the collection of such transition bond charges, or any pledging, assignment, sale or other transfer of bondable transition property in connection with the initial transition bond charge provided in paragraph (2) of subsection a. of this section, including a schedule of payments of principal and interest on the transition bonds, which notice shall be given not later than five business days after issuance and sale of the transition bonds. Notwithstanding any other provision of law, the notice to the board required to be given by the electric public utility in connection with the issuance and sale of transition bonds under this subsection shall not be subject to the provisions of R.S.48:3-7 and R.S.48:3-9 and shall not affect the rights of bondholders.

b. Each bondable stranded costs rate order shall provide for mandatory periodic adjustments by the board of the transition bond charges that are the subject of the bondable stranded costs rate order, upon petition of the affected electric public utility, its assignee or financing entity, to conform the transition bond charges to the schedule of payments of principal and interest on the transition bonds provided to the board by the electric public utility pursuant to subsection a. of this section. Such adjustments shall be made at least annually. Each such adjustment shall be formula-based, shall be in the amount required to ensure receipt of revenues sufficient to provide for the full recovery of bondable stranded costs, including, without limitation, the timely payment of principal of, and interest and acquisition or redemption premium on, transition bonds

issued to finance such bondable stranded costs, which shall be recovered over the term of the transition bonds and in accordance with the schedule of payments of principal and interest on the transition bonds provided to the board by the electric public utility pursuant to subsection a. of this section and shall become effective 30 days after filing thereof with the board absent a determination of manifest error by the board. The electric public utility shall propose such adjustments in a filing with the board at least 30 days in advance of the date upon which it is requested to be effective. The proposed adjustment shall become effective on an interim basis on such date and, in the absence of a board order to the contrary, shall become final 60 days thereafter. Each such adjustment shall be formula-based and shall be in the amount required to ensure receipt of revenues sufficient to provide for the full recovery of bondable stranded costs including, without limitation, the timely payment of principal of, and interest and acquisition or redemption premium on, transition bonds issued to finance such bondable stranded costs, which shall be recovered over the term of the transition bonds and in accordance with the schedule of payments of principal and interest on the transition bonds provided to the board by the electric public utility pursuant to subsection a. of this section. Such periodic adjustments shall not in any way affect the validity or irrevocability of the bondable stranded costs rate order or any sale, assignment or other transfer of or any pledge or security interest granted with respect to the related bondable transition property and shall not affect rights of bondholders.

c. A bondable stranded costs rate order and the authority to meter, charge, collect and receive the transition bond charges authorized thereby shall remain in effect until the related bondable stranded costs, including, without limitation, the principal of, and accrued interest and acquisition or redemption premium on, any transition bonds issued to finance such bondable stranded costs, have been paid in full and all other obligations and undertakings with respect thereto have been fully satisfied. Until the bondable stranded costs, including, without limitation, the principal of, and accrued interest and acquisition or redemption premium on, any transition bonds issued to finance such bondable stranded costs, have been paid in full and all other obligations and undertakings with respect thereto have been fully satisfied, the electric public utility shall be obligated to provide electricity through its transmission and distribution system to its customers and shall have the right to meter, charge, collect and receive the transition bond charges arising therefrom from its customers, which rights and obligations may be assignable solely within the discretion of the electric public utility.

d. Each bondable stranded costs rate order shall provide that any transition bond charges held by the assignee or trustee of the related transition bonds in excess of those amounts necessary to fully recover bondable stranded costs approved in the bondable stranded costs rate order shall be applied as a credit to reduce charges to customers of the electric public utility, except that all bondable stranded costs as quantified in the bondable stranded costs rate orders with respect to the electric public utility shall be aggregated for purposes of determining whether or not the total transition bond charges collected exceed the total bondable stranded costs attributable to such electric public utility and provided, further, that unless the electric public utility can demonstrate to the satisfaction of the board that such credit will result in a recharacterization of the tax, accounting, and other intended characteristics of the transition bonds, including, but not limited to, the following characteristics:

- (1) the recognition of transition bonds as debt on balance sheet of the electric public utility for financial accounting purposes;
- (2) treatment of the transition bonds as debt of the electric public utility or its affiliates for federal income tax purposes;
- (3) treatment of the transfer of bondable transition property by the electric public utility as a true sale for bankruptcy purposes; and
- (4) an adverse impact of the transition bonds on the credit rating of the electric public utility.

e. An electric public utility may commingle the revenues received from amounts charged, collected and received under transition bond charges for bondable stranded costs approved in any one or more bondable stranded costs rate orders with other funds of the electric public utility, which shall in no way affect the validity or irrevocability of any bondable stranded costs rate order issued in connection therewith or any sale, assignment or other transfer of or any

pledge or security interest granted with respect to the bondable transition property created thereby.

f. Except as provided otherwise in this act, all proceedings in connection with the determination of bondable stranded costs, transition bond charges and bondable stranded costs rate orders shall be exempt from the provisions of Title 48 of the Revised Statutes and any regulations promulgated thereunder.

C.48:3-65 Orders become irrevocable upon issuance.

16. a. Notwithstanding any other provision of law, each bondable stranded costs rate order and the transition bond charges authorized therein shall become irrevocable upon the issuance of such order and its becoming effective pursuant to section 19 of this act. The bondable stranded costs rate order, the transition bond charges and the bondable transition property shall constitute a vested, presently existing property right upon the transfer to an assignee and receipt of consideration for such bondable transition property. Following such transfer and receipt of consideration, such property right in bondable transition property shall be vested *ab initio* in such assignee.

b. Neither the board nor any other governmental entity shall have the authority, directly or indirectly, legally or equitably, to rescind, alter, repeal, modify or amend a bondable stranded costs rate order, to revalue, re-evaluate or revise the amount of bondable stranded costs, to determine that the transition bond charges or the revenues required to recover bondable stranded costs are unjust or unreasonable, or in any way to reduce or impair the value of bondable transition property, nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement or termination, provided, however, that nothing in this section shall preclude adjustments of the transition bond charges in accordance with the provisions of paragraph (2) of subsection a. and of subsection b. of section 15 of this act.

C.48:3-66 State pledge to holders of transition bonds; orders not pledge of State's credit.

17. a. The State of New Jersey does hereby pledge and agree with the holders of any transition bonds issued under the authority of this act, with the pledgee, owner or assignee of bondable transition property, with any financing entity which has issued transition bonds with respect to which a bondable stranded costs rate order has been issued and with any person who may enter into agreements with an electric public utility or an assignee or pledgee thereof or a financing entity pursuant to this act, that the State will not limit, alter or impair any bondable transition property or other rights vested in an electric public utility or an assignee or pledgee thereof or a financing entity or vested in the holders of any transition bonds pursuant to a bondable stranded costs rate order until such transition bonds, together with the interest and acquisition or redemption premium, if any, thereon, are fully paid and discharged or until such agreements are fully performed on the part of the electric public utility, any assignee or pledgee thereof or the financing entity or in any way limit, alter, impair or reduce the value or amount of the bondable transition property approved by a bondable stranded costs rate order, provided, however, that nothing in this section shall preclude the adjustment of the transition bond charges in accordance with subsection b. of section 15 of this act. Any financing entity is authorized to include this covenant and undertaking of the State of New Jersey in any documentation with respect to the transition bonds issued thereby.

b. A bondable stranded costs rate order issued under this act does not constitute a debt or liability of the State or of any political subdivision thereof, nor does it constitute a pledge of the full faith and credit of the State or any of its political subdivisions. The issuance of transition bonds under this act shall not directly, indirectly, or contingently obligate the State or any political subdivision thereof to levy or pledge any form of taxation therefor or to make an appropriation for their payment, and any such transition bonds shall be payable solely from the bondable transition property and such other proceeds or property as may be pledged therefor.

C.48:3-67 Customers assessed for transition bond charges.

18. The transition bond charges established by the board in bondable stranded costs rate orders shall be assessed against all customers of the electric public utility, except as provided in

section 28 of this act. Transition bond charges shall be established by the board in accordance with sections 14 and 15 of this act and shall apply equally to each customer of the electric public utility based on the amount of electricity delivered to the customer through the transmission and distribution system of the electric public utility or any successor.

C.48:3-68 Effectiveness of bondable stranded costs rate order.

19. Each bondable stranded costs rate order shall be effective only in accordance with the terms thereof and upon the written consent of the petitioning electric public utility to all such terms.

C.48:3-69 Recourse against issuer only.

20. Transition bonds shall be recourse only to the credit and assets of the issuer of the transition bonds.

C.48:3-70 Electric public utility to maintain records of transition bond charges.

21. An electric public utility shall maintain or cause to be maintained records of transition bond charges which have been assessed and collected by the electric public utility for each bondable stranded costs rate order applicable to the electric public utility. Such electric public utility records and any records of a financing entity shall be made available by the electric public utility for inspection and examination within a reasonable time upon demand therefor by the board or the related financing entity.

C.48:3-71 Issuance of transition bonds; security.

22. a. Electric public utilities or other financing entities may, but are not required to, issue transition bonds authorized by the board in any bondable stranded costs rate order.

b. An electric public utility or its assignee may sell, assign and otherwise transfer all or portions of its interest in bondable transition property to assignees or financing entities in connection with the issuance of transition bonds. In addition, an electric public utility, an assignee or a financing entity may pledge, grant a security interest in, or encumber bondable transition property as collateral for transition bonds.

c. Bondable transition property shall constitute an account and shall constitute presently existing property for all purposes, including for contracts securing transition bonds, whether or not the revenues and proceeds arising with respect thereto have accrued and notwithstanding the fact that the value of the property right may depend upon consumers using electricity or, in those instances where consumers are customers of a particular electric public utility, such electric public utility performing certain services. The validity of any sale, assignment or other transfer of bondable stranded cost shall not be defeated or adversely affected by the commingling by the electric public utility of revenues received from amounts charged, collected and received as transition bond charges with other funds of the electric public utility. Any description of the bondable transition property in a security agreement or financing statement filed with respect to the transfer of such bondable transition property in accordance with N.J.S.12A:9-401 shall be sufficient if it refers to the bondable stranded costs rate order establishing the bondable transition property.

d. A perfected security interest in bondable transition property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues and proceeds shall have accrued. The validity and relative priority of a pledge of, or security interest in, bondable transition property shall not be defeated or adversely affected by the commingling by the electric public utility of revenues received from amounts charged, collected and received as transition bond charges with other funds of the electric public utility. Any description of the bondable transition property in a security agreement or financing statement filed with respect to the granting of a security interest in such bondable transition property in accordance with N.J.S.12A:9-401 shall be sufficient if it refers to the bondable stranded costs rate order establishing the bondable transition property.

e. In the event of default by the electric public utility or its assignee in payment of revenues arising with respect to the bondable transition property, and upon the application by the pledgees

or transferees of the bondable transition property, the board or any court of competent jurisdiction shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the bondable transition property, which application shall not limit any other remedies available to the pledgees or transferees by reason of the default. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency proceedings with respect to the debtor, pledgor or transferor of the bondable transition property. Any amounts in excess of amounts necessary to satisfy obligations then outstanding on or related to transition bonds shall be applied in the manner set forth in subsection d. of section 15 of this act.

f. To the extent that any such interest in bondable transition property is so sold or assigned, or is so pledged as collateral, the electric public utility shall be authorized to enter into a contract with the secured party, the assignee or the financing entity providing that the electric public utility shall continue to operate its transmission and distribution system to provide service to its customers, shall impose, charge, collect and receive transition bond charges in respect of the bondable transition property for the benefit and account of the secured party, the assignee or the financing entity, and shall account for and remit such amounts to and for the account of the secured party, the assignee or the financing entity. In the event of a default by the electric public utility in respect of charging, collecting and receiving revenues derived from transition bond charges and upon the application by the secured party, the assignee or the financing entity, the board or any court of competent jurisdiction shall by order designate a trustee or other entity to act in the place of the electric public utility to impose, meter, charge, collect and receive transition bond charges in respect of the bondable transition property for the benefit and account of the pledgee, the assignee or the financing entity. The board may, at its discretion, establish criteria for the selection of any entity that may become a servicer of bondable transition property upon the default or other adverse material change in the financial condition of the electric public utility.

g. An agreement by an assignor of bondable transition property not to assert any defense, claim or set-off against an assignee of the bondable transition property shall be enforceable against the assignor by the assignee and by any successor or subsequent assignee thereof.

C.48:3-72 Transfer of bondable transition property.

23. a. If an agreement by an electric public utility or its assignee to transfer bondable transition property expressly states that the transfer is a sale or other absolute transfer, then, notwithstanding any other provisions of law:

(1) Such transfer shall constitute a sale by the electric public utility or its assignee of all right, title, and interest of the electric public utility or its assignee, as applicable, in and to such bondable transition property;

(2) Such transfer shall constitute a sale or other absolute transfer of, and not a borrowing secured by, such bondable transition property;

(3) Upon execution and delivery of such agreement, the electric public utility or its assignee shall have no right, title or interest in or to such bondable transition property, except to the extent of any retained equity interest permitted by the provisions of this act; and

(4) The characterization of a transfer as a sale or other absolute transfer shall not be affected or impaired in any manner by, among other things: (a) the assignor's retention, or acquisition as part of the assignment transaction or otherwise, of a *pari passu* equity interest in bondable transition property or the fact that only a portion of the bondable transition property is otherwise transferred; (b) the assignor's retention, or acquisition as part of the assignment transaction or otherwise, of a subordinate equity interest or other provision of credit enhancement on terms substantially commensurate with market practices; (c) the fact that the electric public utility acts as the collector or servicer of transition bond charges; (d) the assignor's retention of bare legal title to bondable transition property for the purpose of servicing or supervising the servicing of such property and collections with respect thereto; or (e) treatment of such transfer as a financing for federal, State or local tax purposes or financial accounting purposes.

b. Such transfer shall be perfected against any third party when:

- (1) The board has issued a bondable stranded costs rate order with respect to such bondable transition property;
- (2) Such agreement has been executed and delivered by the electric public utility or its assignee; and
- (3) A financing statement has been filed with respect to the transfer of such bondable transition property in accordance with N.J.S.12A:9-401 et seq.

C.48:3-73 Successor to electric public utility.

24. Any successor to an electric public utility, whether pursuant to any bankruptcy, reorganization or other insolvency proceedings or pursuant to any merger, consolidation or sale or transfer of assets of the electric public utility, by operation of law, as a result of electric power industry restructuring or otherwise, shall perform and satisfy all obligations and be entitled to the same rights of its predecessor electric public utility under this act or the bondable stranded costs rate order or any contract entered into pursuant to this act in the same manner and to the same extent as such predecessor electric public utility, including, but not limited to, charging, collecting, receiving and paying to the person entitled thereto the revenues in respect of the transition bond charges relating to the bondable transition property. Bondable transition property, and any payments in respect to bondable transition property, including, without limitation, transition bond charges, shall not be subject to any setoffs, counterclaims, surcharges or defenses by the electric public utility, any customer, or any other person, in connection with the bankruptcy, insolvency or default of the electric public utility or otherwise.

C.48:3-74 Application for bondable stranded costs rate order not required.

25. Notwithstanding any of the provisions of this act, an electric public utility shall not be obligated under this act to apply to the board for any bondable stranded costs rate order, consent to the terms of any bondable stranded costs rate order, or sell, transfer or pledge any bondable transition property, or issue transition bonds in connection therewith.

The consideration or approval by the board of a petition by any electric public utility under this act, including the periodic adjustment provided in subsection b. of section 15 of this act shall be wholly separate from and shall not be utilized in the board's consideration of any other ratemaking or other proceeding involving the electric public utility except as otherwise provided in this act.

C.48:3-75 Expedited judicial review of bondable stranded costs rate orders.

26. In order to maximize the rate savings to customers of the electric public utility under a bondable stranded costs rate order, which order may be time-sensitive because financial market conditions may affect the feasibility and terms of transition bonds approved for issuance therein, the parties involved in proceedings resulting in such an order shall attempt to expedite judicial review pursuant to the following procedures:

a. Upon the issuance of a bondable stranded costs rate order, the board shall forthwith cause a certified copy of such order to be served upon each party entitled thereto. The electric public utility shall, within 10 days of such service upon it, file with the board its written consent to such order or its objections thereto.

b. Any party to the proceedings resulting in a bondable stranded costs rate order who claims to be aggrieved by such order, including but not limited to any electric public utility which has withheld its consent and objected thereto or any financing entity interested therein, may seek judicial review of such order in accordance with the applicable Rules Governing the Courts of the State of New Jersey and the provisions of this act. Such judicial review shall be the exclusive remedy for the parties involved in a proceeding resulting in a bondable stranded costs rate order and no petition for rehearing to the board shall be made or entertained.

c. Any party seeking judicial review under this section shall file a motion for expedited consideration of the appeal before any appellate court in which an appeal may be pending on the ground that acceleration is warranted because the subject of the appeal involves matters of important public interest.

C.48:3-76 Bondable transition property constitutes an account.

27. a. For purposes of this act, and the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable transition property, as defined in N.J.S.12A:9-105(1), shall constitute an account. For purposes of this act, and the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., bondable transition property shall be in existence whether or not the revenues or proceeds in respect thereof have accrued, in accordance with subsection c. of section 22 of this act. The validity, perfection or priority of any security interest in bondable transition property shall not be defeated or adversely affected by changes to the bondable stranded costs rate order or to the transition bond charges payable by any customer. Any description of bondable transition property in a security agreement or other agreement or a financing statement shall be sufficient if it refers to the bondable stranded costs rate order establishing the bondable transition property.

b. In addition to the other rights and remedies provided or authorized by this act, and by the Uniform Commercial Code - Secured Transactions, N.J.S.12A:9-101 et seq., when a debtor is in default under a security agreement and the collateral is bondable transition property, then upon application by the secured party, the board or any court of competent jurisdiction shall order the sequestration and payment to the secured party of all collections and other proceeds of such bondable transition property up to the value of the property. In the event of any conflicts, priority among pledgees, transferees or secured parties shall be determined under chapter 9 of Title 12A of the New Jersey Statutes. The secured party must account to the debtor for any surplus and, unless otherwise agreed, the debtor shall be liable for any deficiency.

C.48:3-77 Charges for sale, delivery of power to off-site customer.

28. a. Whenever an on-site generation facility produces power that is not consumed by the on-site customer, and that power is delivered to an off-site end-use customer in this State, all the following charges shall apply to the sale or delivery of such power to the off-site customer:

- (1) The societal benefits charge or its equivalent, imposed pursuant to section 12 of this act;
- (2) The market transition charge or its equivalent, imposed pursuant to section 13 of this act; and
- (3) The transition bond charge or its equivalent, imposed pursuant to section 18 of this act.

b. None of the following charges shall be imposed on the electricity sold solely to the on-site customer of an on-site generating facility, except pursuant to subsection c. of this section:

- (1) The societal benefits charge or its equivalent, imposed pursuant to section 12 of this act;
- (2) The market transition charge or its equivalent, imposed pursuant to section 13 of this act; and
- (3) The transition bond charge or its equivalent, imposed pursuant to section 18 of this act.

c. Upon finding that generation from on-site generation facilities installed subsequent to the starting date of retail competition as provided in subsection a. of section 5 of this act has, in the aggregate, displaced customer purchases from an electric public utility by an amount such that the kilowatt hours distributed by the electric public utility have been reduced to an amount equal to 92.5 percent of the 1999 kilowatt hours distributed by the electric public utility, the board shall impose, except as provided in subsection d. of this section, the charges listed in subsections a., b., and c. of this section on the on-site customer. Such charges shall not be levied on any power consumption that is displaced by an on-site generation facility that is installed before the date of such finding:

- (1) The societal benefits charge or its equivalent, imposed pursuant to section 12 of this act;
- (2) The market transition charge or its equivalent, imposed pursuant to section 13 of this act; and
- (3) The transition bond charge or its equivalent, imposed pursuant to section 18 of this act.

d. Notwithstanding the provisions of subsection c. of this section, a charge shall not be imposed on power consumption by the on-site customer that is derived from an on-site generation facility:

(1) That the on-site customer or its agent installed on or before the effective date of this act, including any expansion of such a facility for the continued provision of on-site power consumption by the same on-site customer that occurs after the effective date of this act; or

(2) For which the on-site customer or its agent has made, on or before the effective date of this act, substantial financial and contractual commitments in planning and development, including having applied for any appropriate air permit from the Department of Environmental Protection, including any expansion of such a facility for the continued provision of on-site power consumption by the same on-site customer that occurs after the effective date of this act.

C.48:3-78 Electric power supplier license.

29. a. A person shall not offer to provide or provide electric generation service to retail customers in this State unless that person has applied for and obtained from the board, pursuant to standards adopted by the board, an electric power supplier license. Persons providing such services on the effective date of this act shall have 120 days to apply for and receive the requisite license.

b. The board shall issue a license to an electric power supplier that is in compliance with the licensing standards adopted pursuant to subsection c. of this section. A license shall expire one year from the date of issuance unless the holder thereof pays to the board, within 30 days before the expiration date, a renewal fee accompanied by a renewal application on a form prescribed by the board. If a licensee has made, in accordance with this section and any applicable board rules or regulations, timely and sufficient application for renewal, the license shall not expire until the application has been reviewed and acted upon by the board. Nothing in this section shall limit the authority of the board to deny, suspend or revoke a license at any time, consistent with the provisions of this act.

c. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, after notice, provision of the opportunity for comment, and public hearing, interim electric power supplier licensing standards within 90 days of the effective date of this act. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act." The standards shall include, but need not be limited to, the following requirements that an electric power supplier:

(1) Register with the board, which shall include the filing of basic information pertaining to the supplier, such as name, address, telephone number, and company background and profile, and a list of the services or products offered by the supplier. A supplier shall provide annual updates of this information to the board. The registration shall also include:

(a) Evidence of financial integrity;

(b) Information on any disciplinary proceedings or actions by law enforcement authorities in which the electric power supplier, its subsidiaries, affiliates or parent has been involved in this State or any other states;

(c) The ownership interests of the supplier including the interests owned by the supplier and the interests owning the supplier;

(d) The name and address of the in-State agent of the supplier that is authorized to receive service of process;

(e) The name and address of the in-State customer service agent for the supplier; and

(f) The quantity of retail electric sales made in this State during the 12 months preceding the application.

(2) Agree to meet all reliability standards established by the Mid-Atlantic Area Council of the North American Electric Reliability Council or its successor, the PJM Interconnection, L.L.C. independent system operator or its successor, the Federal Energy

Regulatory Commission, the board, or any other state, regional, federal or industry body with authority to establish reliability standards. The board may establish specific standards applicable to electric power suppliers to ensure the adequacy of electric power capacity, if it determines that standards established by any other state, regional, federal or industry bodies are not sufficient to assure the provision of safe, adequate, proper and reliable electric generation service to retail customers in this State. Such reliability standards shall ensure bulk power system operations and security, and shall ensure the adequacy of electric power capacity necessary to meet retail loads;

(3) Maintain an office within this State for the purposes of accepting service of process, maintaining such records as the board requires and ensuring accessibility to the board, consumers and electric public utilities;

(4) Maintain a surety bond under terms and conditions as determined by the board;

(5) Provide a description of the products and services to be rendered;

(6) Comply with such specific standards of conduct for electric power suppliers as the board shall adopt; and

(7) Provide through legal certification by an officer of the electric power supplier such information as the board or its staff shall require to assist the board in making any determination concerning revocation, suspension, issuance or renewal of the supplier's license pursuant to section 32 of this act.

d. An electric public utility shall:

(1) Incorporate by reference the board's licensing requirements in its tariffs for transmission and distribution service;

(2) Apply the licensing requirements and other conditions for access to the transmission and distribution system uniformly to all electric power suppliers; and

(3) Report alleged violations of the board's licensing requirements of which it becomes aware to the board.

e. The board shall establish an alternative dispute resolution program to resolve any licensure or access dispute between an electric power supplier and an electric public utility. The board may establish reasonable fees, not to exceed actual costs, for the provision of alternate dispute resolution services. If informal resolution of the dispute is unsuccessful, the board shall adjudicate the dispute as a contested case pursuant to the "Administrative Procedure Act."

f. The board shall monitor the retail supply market in this State, and shall consider information available from the PJM Interconnection, L.L.C. independent system operator or its successor with respect to the conduct of electric power suppliers. The board shall monitor proposed acquisitions of electric generating facilities by electric power suppliers as it deems necessary, in order to ascertain whether an electric power supplier has or is proposed to have control over electric generating facilities of sufficient number or strategic location to charge non-competitive prices to retail customers in this State. The board shall have the authority to deny, suspend or revoke an electric power supplier's license, after hearing, if it determines that an electric power supplier has or may acquire such control, or if the electric power supplier's violations of the rules, regulations or procedures of the PJM Interconnection, L.L.C. independent system operator or its successor may adversely affect the reliability of service to retail customers in this State or may result in retail customers being charged non-competitive prices.

g. The board may establish safety and service quality standards for electric power suppliers, and nothing in this act shall limit the authority of the board to promulgate such safety or service quality standards or to resolve complaints regarding the quality of electric generation service.

h. The board may establish, by written order pursuant to subsection c. of this section or by rule, a licensure fee to cover the costs of licensing electric power suppliers. The fee shall include a reasonable surcharge to fund a consumer education program in this State established pursuant to section 36 of this act.

i. Any provision of this act to the contrary notwithstanding, any person acting as an energy agent shall be required to register with the board. This registration shall include, but need not be limited to, the name, address, telephone number, and business affiliation or profile of the energy agent, evidence of financial integrity as determined by the board, and evidence of

knowledge of the energy industry. This registration shall be updated annually. Nothing in this subsection shall be construed to limit or exempt an energy agent from liability under any other law pertaining to any activity which an energy agent may engage in.

C.48:3-79 Gas supplier license.

30. a. A person shall not offer to provide or provide gas supply service to retail customers in this State unless that person has applied for and obtained from the board, pursuant to standards adopted by the board, a gas supplier license. A person providing such services on the effective date of this act shall have 120 days to apply for and receive the requisite license.

b. The board shall issue a license to a gas supplier that is in compliance with the licensing standards adopted pursuant to subsection c. of this section. A license shall expire one year from the date of issuance unless the holder thereof pays to the board, within 30 days before the expiration date, a renewal fee accompanied by a renewal application on a form prescribed by the board.

c. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim gas supplier licensing standards within 90 days of the effective date of this act. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act." The standards shall include, but need not be limited to, the following requirements that a gas supplier:

(1) Register with the board, which shall include the filing of basic information pertaining to the gas supplier, such as name, address, telephone number, and company background and profile, and a list of the services or products offered by the gas supplier. A gas supplier shall provide annual updates of this information to the board. The registration shall also include:

(a) Evidence of financial integrity;

(b) Information on any disciplinary proceedings or actions by law enforcement authorities in which the gas supplier, its subsidiaries, affiliates or parent has been involved in this State or any other states;

(c) The ownership interests of the gas supplier including the interests owned by the gas supplier and the interests owning the gas supplier;

(d) The name and address of the in-State agent of the gas supplier that is authorized to receive service of process;

(e) The name and address of the in-State customer service agent for the gas supplier;

(f) The quantity of retail gas sales made in this State during the 12 months preceding the application; and

(g) A list of the services or products offered by the gas supplier; (2) Agree to meet all reliability standards established by the board or any other state, regional, federal or industry body with authority to establish reliability standards. The board may establish specific standards applicable to gas suppliers to ensure the adequacy of gas capacity, if it determines that standards established by any other state, regional, federal or industry bodies are not sufficient to assure the provision of safe, adequate, proper and reliable gas supply service to retail customers in this State;

(3) Maintain an office within this State for purposes of accepting service of process, maintaining such records as the board requires and ensuring accessibility to the board, consumers and gas public utilities;

(4) Maintain a surety bond under terms and conditions approved by the board;

(5) Provide a description of the products and services to be rendered;

(6) Comply with such specific standards of conduct for gas suppliers as the board shall adopt; and

(7) Provide through legal certification by an officer of the gas supplier such information as the board or its staff shall require to assist the board in making any determination concerning revocation, suspension, issuance or renewal of the gas supplier's license pursuant to section 32 of this act.

d. A gas public utility shall:

(1) Incorporate by reference the board's licensing requirements in its tariffs for distribution service;

(2) Apply the licensing requirements and other conditions for access to the distribution system uniformly to all gas suppliers;

(3) Not unreasonably deny a licensed gas supplier access to its distribution system; and

(4) Report alleged violations of the board's licensing requirements of which it becomes aware to the board.

e. The board shall establish an alternative dispute resolution program to resolve any licensure or access dispute between a gas supplier and a gas public utility. The board may establish reasonable fees, not to exceed actual costs, for the provision of alternate dispute resolution services. If informal resolution of the dispute is unsuccessful, the board shall adjudicate the dispute as a contested case pursuant to the "Administrative Procedure Act."

f. The board may establish safety and service quality standards for gas suppliers, and nothing in this act shall limit the authority of the board to promulgate such safety or service quality standards or to resolve complaints regarding the quality of gas supply service.

g. The board may establish, by written order pursuant to subsection c. of this section or by rule, a licensure fee to cover the costs of licensing gas suppliers. The fee shall include a reasonable surcharge to fund a consumer education program in this State established pursuant to section 36 of this act.

C.48:3-80 Investigative power of board relative to suppliers.

31. a. Whenever it shall appear to the board that an electric power supplier or a gas supplier has engaged in, is engaging in, or is about to engage in any act or practice that is in violation of this act, or when the board shall deem it to be in the public interest to inquire whether any such violation may exist, the board may exercise any of the following investigative powers:

(1) Require any person to file, on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of this act;

(2) Examine under oath any person in connection with any act or practice subject to the requirements of this act;

(3) Inspect any premises from which an electric power supplier or a gas supplier conducts business;

(4) Examine any goods, ware, item or facility used in the supply of electric power or gas;

(5) Examine any record, book, document, account, electronic data or paper maintained by or for any electric power supplier or gas supplier;

(6) For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, electronic data, goods, ware, item or facility used or maintained by or for any electric power supplier or gas supplier in the regular course of business. In such cases as may be necessary, the Superior Court may, on application of the board, issue an order sealing items or material subject to this paragraph.

b. If any person shall fail or refuse to file any statement or report or refuse access to premises from which an electric power supplier or a gas supplier conducts business in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the board may apply to the Superior Court and obtain an order:

(1) Adjudging such person in contempt of court;

(2) Granting such other relief as may be required; or

(3) Suspending the license of any such person unless and until compliance with the subpoena or investigative demand is effected.

c. Whenever the board finds that a violation by an electric power supplier or a gas supplier of this act, including the unlicensed supplying of electric power or gas, or of any rule or regulation adopted by the board pursuant thereto, has occurred, is occurring or will occur, the board, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting such act or practice.

C.48:3-81 Revocation, suspension, refusal to issue renew supplier's license.

32. a. The board may revoke, suspend, or refuse to issue or renew an electric power supplier's license or a gas supplier's license at any time upon a finding that the supplier:

- (1) Has obtained a license through fraud, deception or misrepresentation;
- (2) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- (3) Has engaged in gross negligence or gross incompetence;
- (4) Has engaged in repeated acts of negligence or incompetence;
- (5) Has engaged in misconduct as may be determined by the board;
- (6) Has been convicted of any crime involving moral turpitude or any crime relating adversely to the activity regulated by the board, has not fulfilled the licensure requirements or is not in compliance with the safety and service quality standards adopted by the board. For the purpose of this subsection, a plea of guilty, *non vult*, *nolo contendere* or any other such disposition of alleged criminal activity shall be deemed a conviction;
- (7) Has violated any consumer protection law or regulation in this State or any other state or has had its authority to engage in supplying electric power or gas revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- (8) Has violated or failed to comply with the provisions of any law or regulation or order adopted by the board;
- (9) Is incapable, for any good cause, of discharging the functions of an electric power supplier or a gas supplier in a manner consistent with the public health, safety and welfare; or
- (10) Has repeatedly failed to submit completed applications, or parts of such applications, or documentation submitted in conjunction with such applications, required to be filed with the Department of Environmental Protection.

b. The board may, upon a duly verified application alleging an act or practice violating any provision of this act or any rule adopted pursuant thereto, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint when the application made to the board and imminent danger to the public health, safety or welfare, and notice of such application is given to the licensee affected by such order.

C.48:3-82 Additional remedies.

33. a. In addition or as an alternative, as the case may be, to revoking, suspending or refusing to issue or to renew the license of an electric power supplier or a gas supplier, the board may, after notice and opportunity for a hearing:

- (1) Issue a letter of warning, reprimand or censure with regard to any act, conduct or practice that in the judgment of the board, upon consideration of all relevant facts and circumstances, does not warrant the initiation of formal action;
- (2) Assess a civil penalty pursuant to section 34 of this act;
- (3) Order that any person violating any provision of this act or any rule adopted pursuant to this act cease and desist from future violations thereof or take affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;
- (4) Order any person found to have violated any provision of this act or any rule adopted pursuant thereto to restore to any person aggrieved by an unlawful act or practice any moneys or property, real or personal, or the equivalent value of any property, real or personal, acquired by means of such act or practice; except that the board shall not order restoration in a dollar amount greater than the total value of those monies or property received by a licensee or a licensee's agent or any other person violating the act or rule.

b. In any administrative proceeding commenced on a complaint alleging a violation of this act or of a rule adopted pursuant thereto, the board or the board secretary may issue subpoenas to compel the attendance of witnesses or the production of electronic data, books, records, or documents at the hearing on the complaint.

c. In any action brought pursuant to this act, the board or the court may order the payment of costs for the use of the State.

d. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy, including any civil remedy for damage, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

C.48:3-83 Violations, penalties.

34. Any person who violates any provision of this act shall be liable for a civil penalty of not more than \$5,000 for the first offense, except for a violation of section 37 of this act, for which a person shall be liable for a civil penalty of not more than \$10,000 for the first offense, and not more than \$25,000 for the second and each subsequent offense, for each day that the violation continues. Any civil penalty which may be imposed pursuant to this section may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider: the nature, circumstances and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate. The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

C.48:3-84 Rights, remedies, prohibitions; cumulative.

35. a. The rights, remedies and prohibitions accorded by the provisions of this act are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition. The Attorney General and the Division of Consumer Affairs in the Department of Law and Public Safety shall continue to have the authority to enforce civil and criminal violations of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.) or any other applicable law, rule or regulation in connection with the activities of electric power suppliers and gas suppliers.

b. Administrative and judicial remedies provided in this act may be pursued simultaneously.

C.48:3-85 Consumer protection standards.

36. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim consumer protection standards for electric power suppliers or gas suppliers within 90 days of the effective date of this act, including, but not limited to, standards for collections, credit, contracts, authorized changes of an energy consumer's electric power supplier or gas supplier, for the prohibition of discriminatory marketing, for advertising and for disclosure. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

(1) Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts must conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved

by the board; have the customer's written signature or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board.

(2) Standards for the prohibition of discriminatory marketing standards shall provide at a minimum that a decision made by an electric power supplier or a gas supplier to accept or reject a customer shall not be based on race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location. The board shall adopt reporting requirements to monitor compliance with such standards.

(3) Advertising standards for electric power suppliers or gas suppliers shall provide, at a minimum, that optional charges to the consumer will not be added to any advertised cost per kilowatt hour or per therm, and that the only unit of measurement that may be used in advertisements is cost per kilowatt hour or per therm, unless otherwise approved by the board. If an electric power supplier or gas supplier does not advertise using cost per kilowatt hour or per therm, the electric power supplier or gas supplier shall provide, at the consumer's request, an estimate of the cost per kilowatt hour or per therm. Any optional charges to the consumer shall be identified separately and denoted as optional.

(4) Credit standards shall include, at a minimum, that the credit requirements used to make offer decisions must be the same for all residential customers and that electric power suppliers, gas suppliers and private aggregators not impose unreasonable income or credit requirements.

(5) Billing standards shall include, at a minimum, provisions prohibiting electric public utilities, gas public utilities, electric power suppliers and gas suppliers from charging a fee to residential customers for either the commencement or termination of electric generation service or gas supply service.

b. (1) An electric power supplier, a gas supplier, an electric public utility, and a gas public utility shall not disclose, sell or transfer individual proprietary information, including, but not limited to, a customer's name, address, telephone number, energy usage and electric power payment history, to a third party without the written consent of the customer. Whenever such individual proprietary information is disclosed, sold or transferred, upon the written consent of the customer, it may be used only for the provision of continued electric generation service, electric related service, gas supply service or gas related service to that customer. In the case of a transfer or sale of a business, customer consent shall not be required for the transfer of customer proprietary information to the subsequent owner of the business for maintaining the continuation of such services.

(2) An electric power supplier, a gas supplier, a gas public utility or an electric public utility may use individual proprietary information that it has obtained by virtue of its provision of electric generation service, electric related service, gas supply service or gas related service to:

(a) Initiate, render, bill and collect for such services to the extent otherwise authorized to provide billing and collection services;

(b) Protect the rights or property of the electric power supplier, gas supplier or public utility; and

(c) Protect consumers of such services and other electric power suppliers, gas suppliers or electric and gas public utilities from fraudulent, abusive or unlawful use of, or subscription to, such services.

c. The board shall establish and maintain a database for the purpose of recording customer complaints concerning electric and gas public utilities, electric power suppliers, gas suppliers, private aggregators, and energy agents.

d. The board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall establish, or cause to be established, a multi-lingual electric and gas consumer education program. The goal of the consumer education program shall be to educate residential, small business, and special needs consumers about the implications for consumers of the restructuring of the electric power and gas industries. The consumer education program

shall include, but need not be limited to, the dissemination of information to enable consumers to make informed choices among available electricity and gas services and suppliers, and the communication to consumers of the consumer protection provisions of this act.

The board shall ensure the neutrality of the content and message of advertisements and materials.

The board shall promulgate standards for the recovery of consumer education program costs from customers which include reasonable measures and criteria to judge the success of the program in enhancing customer understanding of retail choice.

C.48:3-86 "Slamming" prevention; penalties.

37. a. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim standards for electric power suppliers or gas suppliers, within 90 days of the effective date of this act, to prevent and establish penalties for unauthorized changes of a consumer's electric power supplier or gas supplier, a practice commonly known as "slamming." Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

b. Standards for the prohibition of unauthorized changes in a customer's electric power supplier or gas supplier shall include:

(1) An electric power supplier, an electric public utility, a gas supplier or a gas public utility shall not cause an unauthorized change in a customer's electric power supplier or gas supplier, a practice known as "slamming." A change in a customer's electric power supplier or gas supplier shall be deemed to be unauthorized unless the customer has done so affirmatively and voluntarily and the supplier has obtained the customer's approval either through a written signature or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs, may permit;

(2) An electric power supplier, an electric public utility, a gas supplier or a gas public utility shall not fail to cause a change in a customer's electric power supplier or gas supplier, within a period of time determined to be appropriate by the board, when a supplier or utility is in receipt of a change order provided that such change order has been received in a manner that complies with federal and State rules and regulations, including as provided in this subsection;

(3) The acts of an agent of an electric power supplier, an electric public utility, a gas supplier or a gas public utility shall be considered the acts of the electric power supplier, electric public utility, gas supplier or gas public utility.

c. A customer's new electric power supplier, electric public utility, gas supplier or gas public utility shall notify the customer of the change in the customer's electric or gas supplier within 30 days in a manner to be determined by the board.

d. Bills to customers from an electric power supplier, electric public utility, gas supplier or gas public utility shall contain the name and telephone number of each supplier for whom billing is provided, and any other information deemed applicable by the board.

e. In addition to any other penalties, fines or remedies authorized by law, any electric power supplier, electric public utility, gas supplier or gas public utility that violates this section and collects charges for electric power supply or gas supply services from a customer or through an entity providing customer account services shall be liable to the electric power supplier, electric public utility, gas supplier or gas public utility previously selected by the customer in an amount equal to all charges paid by the customer after such violation in accordance with such procedures as the board may prescribe. Any electric power supplier, electric public utility, gas supplier or gas public utility that violates this section shall also be liable for a civil penalty pursuant to section 34 of this act; and the board is hereby authorized to revoke the license of any entity that violates this section.

C.48:3-87 Environmental disclosure requirements.

38. a. The board shall require an electric power supplier or basic generation service provider to disclose on a customer's bill or on customer contracts or marketing materials, a uniform, common set of information about the environmental characteristics of the energy purchased by the customer, including, but not limited to:

(1) Its fuel mix, including categories for oil, gas, nuclear, coal, solar, hydroelectric, wind and biomass, or a regional average determined by the board;

(2) Its emissions, in pounds per megawatt hour, of sulfur dioxide, carbon dioxide, oxides of nitrogen, and any other pollutant that the board may determine to pose an environmental or health hazard, or an emissions default to be determined by the board; and

(3) Any discrete emission reduction retired pursuant to rules and regulations adopted pursuant to P.L.1995, c.188.

b. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, in consultation with the Department of Environmental Protection, after notice and opportunity for public comment and public hearing, interim standards to implement this disclosure requirement, including, but not limited to:

(1) A methodology for disclosure of emissions based on output pounds per megawatt hour;

(2) Benchmarks for all suppliers and basic generation service providers to use in disclosing emissions that will enable consumers to perform a meaningful comparison with a supplier's or basic generation service provider's emission levels; and

(3) A uniform emissions disclosure format that is graphic in nature and easily understandable by consumers. The board shall periodically review the disclosure requirements to determine if revisions to the environmental disclosure system as implemented are necessary.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

c. (1) The board may adopt, in consultation with the Department of Environmental Protection, after notice and opportunity for public comment, an emissions portfolio standard applicable to all electric power suppliers and basic generation service providers, upon a finding that:

(a) The standard is necessary as part of a plan to enable the State to meet federal Clean Air Act or State ambient air quality standards; and

(b) Actions at the regional or federal level cannot reasonably be expected to achieve the compliance with the federal standards.

(2) The board shall adopt an emissions portfolio standard applicable to all electric power suppliers and basic generation service providers, if two other states in the PJM power pool comprising at least 40 percent of the retail electric usage in the PJM Interconnection, L.L.C. independent system operator or its successor adopt such standards.

d. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim renewable energy portfolio standards that shall require:

(1) that two and one-half percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class I or Class II renewable energy sources; and

(2) beginning on January 1, 2001, that one-half of one percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider be from Class I renewable energy sources. The board shall increase the required percentage for Class I renewable energy sources so that by January 1, 2006, one percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources and shall additionally increase the required percentage for Class I renewable energy sources by one-half of one percent each year until January 1, 2012,

when four percent of the kilowatt hours sold in this State by each electric power supplier and each basic generation service provider shall be from Class I renewable energy sources.

An electric power supplier or basic generation service provider may satisfy the requirements of this subsection by participating in a renewable energy trading program approved by the board in consultation with the Department of Environmental Protection.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

e. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing:

(1) net metering standards for electric power suppliers and basic generation service providers. The standards shall require electric power suppliers and basic generation service providers to offer net metering at non-discriminatory rates to residential and small commercial customers that generate electricity, on the customer's side of the meter, using wind or solar photovoltaic systems for the net amount of electricity supplied by the electric power supplier or basic generation service provider over an annualized period. Where the amount of electricity generated by the customer-generator plus any kilowatt hour credits held over from the previous billing periods exceed the electricity supplied by the electric power supplier or basic generation service provider, the electric power supplier or basic generation service provider, as the case may be, shall credit the customer for the excess kilowatt hours until the end of the annualized period at which point the customer-generator will be compensated for any remaining credits at the electric power supplier's or basic generation service provider's avoided cost of wholesale power. The board may authorize an electric power supplier or basic generation service provider to cease offering net metering whenever the total rated generating capacity owned and operated by net metering customer-generators statewide equals 0.1 percent of the State's peak electricity demand or the annual aggregate financial impact to electric power suppliers and basic generation service providers Statewide, as determined by the board, exceeds \$2,000,000, whichever is less; and

(2) safety and power quality interconnection standards for wind and solar photovoltaic systems that shall be eligible for net metering.

Such standards shall take into consideration the standards of other states and the Institute of Electrical and Electronic Engineers and shall allow customers to use a single, non-demand, non-time differentiated meter.

Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

f. The board may assess, by written order and after notice and opportunity for comment, a separate fee to cover the cost of implementing and overseeing an emission disclosure system or emission portfolio standard, which fee shall be assessed based on an electric power supplier's or basic generation service provider's share of the retail electricity supply market.

C.48:3-88 Status of municipal electric utilities.

39. a. A municipal electric corporation, a municipal electric utility, or a cooperative electric utility that existed prior to the effective date of this act shall not be subject to the requirements of this act, except that a local governmental entity may choose to require the municipal electric corporation, municipal electric utility or cooperative electric utility to implement retail choice, or except as otherwise provided in subsection b. of this section.

b. (1) A municipal electric corporation shall become subject to the provisions of this act if it was an exclusive provider of retail power within its municipal boundaries prior to the effective date of this act, and subsequent to the effective date of this act, it chooses to serve retail customers outside of its municipal boundaries.

(2) A municipal electric utility that is subject to board regulation pursuant to R.S.40:62-24 shall become subject to the provisions of this act, if subsequent to the effective date of this act, it chooses to serve retail customers outside of its franchise area.

(3) A cooperative electric utility shall become subject to the provisions of this act, if subsequent to the effective date of this act, it chooses to serve retail customers outside of its franchise area.

c. A municipal electric corporation or cooperative electric utility that becomes subject to the provisions of this act pursuant to paragraphs (1) and (3) of subsection b. of this section shall be subject to regulation as a public utility under Title 48 of the Revised Statutes.

C.48:3-89 Aggregator contracts; bundling restriction; tax treatment.

40. a. A private aggregator may enter into a contract with a licensed electric power supplier or a licensed gas supplier for the provision of any combination of electric generation service, electric related service, gas supply service or gas related service for business customers.

b. A government aggregator may enter into a contract with a licensed electric power supplier or a licensed gas supplier, as provided in section 42 of this act, for the provision of any combination of electric generation service, electric related service, gas supply service or gas related service for its own use or as combined with the use of other government aggregators in a manner provided by law.

c. For residential customers, gas and electric services cannot be bundled until the gas market is opened up for retail competition for that residential customer.

d. Aggregation of electric generation service or gas supply service by a government aggregator shall not be construed to constitute the formation of a municipal electric corporation or a municipal electric utility created subsequent to the effective date of this act solely for purposes of State taxation and shall not exempt the sale of such services or income from that sale from any tax to which the sale or income would otherwise be subject, including but not limited to the sales and use tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) and the corporation business tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.).

C.48:3-90 Registration of private aggregator.

41. a. A private aggregator shall register with the board, which shall include the filing of basic information pertaining to the supplier, such as name, address, telephone number, and company background and profile. A private aggregator shall provide annual updates of this information to the board. The registration shall also include evidence of financial integrity, as determined by the board, and evidence that the private aggregator has knowledge of the energy industry.

b. Any residential customer that elects to purchase electric generation service or gas supply service, after the implementation of gas unbundling pursuant to section 10 of this act, through a private aggregator must do so affirmatively and voluntarily, either through a written signature or such alternative forms of verification as the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, may permit.

C.48:3-91 Government aggregator.

42. a. Pursuant to the provisions of sections 42 through 45 of this act, a government aggregator may obtain: electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities or with other government aggregators; and a government aggregator that is a county or municipality may contract for the provision of electric generation service or gas supply service, either separately or bundled, for the business and residential customers within the territorial jurisdiction of the government aggregator. Such a government aggregator may combine the need for its own facilities for electric generation service or gas supply service with that of business and residential customers.

b. A government aggregator shall purchase electric generation service and gas supply service only from licensed electric power suppliers and licensed gas suppliers.

c. The government aggregator shall enter into the contract for electric generation service,

electric related service, gas supply service or gas related service for its own facilities or with other government aggregators under the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or the "Interlocal Services Act," P.L.1973, c.208 (C.40:8A-1 et seq.), as applicable.

d. Nothing in this act shall preclude the State government or any State independent authority or State college from exercising authority to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for its own facilities on an aggregated basis.

e. Nothing in this section shall preclude a government aggregator from aggregating its own accounts for regulated utility services, including basic generation or gas service.

f. Nothing in this act shall preclude any interstate authority or agency from exercising authority to obtain electric generation service or gas supply service, either separately or bundled, for its own facilities in this State, including tenants in this State and other utility customers in this State at such facilities, on an aggregated basis. By exercising such authority, no interstate authority or agency shall be deemed to be a public utility pursuant to R.S. 48:1-1 et seq.; provided, however, that nothing in this act shall be construed to exempt such authority or agency from the payment of the market transition charge or its equivalent, imposed pursuant to section 13 of this act, the transition bond charge or its equivalent, imposed pursuant to section 18 of this act and any societal benefits charge or its equivalent, which may be imposed pursuant to section 12 of this act, to the same extent that other customers of an electric public utility pay such charges in conjunction with any transmission and distribution service provided by an electric public utility to the authority or agency.

g. Notwithstanding any other provision of this act to the contrary, a private aggregator that is a private institution of higher education may enter into a contract with a licensed electric power supplier other than a municipal electric corporation, a municipal electric utility, or cooperative electric utility for the provision of electric generation service or electric related service, either separately or bundled, including any private aggregator that is a four-year private institution of higher education which is located within the jurisdiction of a municipality that contains a municipal electric corporation or a municipal electric utility. The right hereunder of a four-year private institution of higher education to enter into a contract with a licensed electric power supplier other than the municipal electric corporation or municipal electric utility shall be subject to the condition that the municipal electric corporation or municipal electric utility shall have the right of first refusal to offer a competitive, market-based price for electric power.

h. The "New Jersey School Boards Association," established pursuant to N.J.S.18A:6-45, is authorized to serve as a government aggregator to obtain electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, in accordance with the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., for members of the association who wish to voluntarily participate.

i. Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, interim standards governing government energy aggregation programs. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

j. No government aggregator shall implement the provisions of section 42, 43, 44, or 45 of this act, as appropriate, prior to the starting date of retail competition pursuant to section 5 of this act, or the date on which the board adopts interim standards pursuant to subsection i. of this section, whichever is earlier.

C.48:3-92 Government energy aggregation programs.

43. Government energy aggregation programs shall be subject to the following provisions:

a. A contract between a government aggregator and a licensed electric power supplier or licensed gas supplier shall include the following provisions:

(1) The specific responsibilities of the government aggregator and the licensed electric power supplier or licensed gas supplier;

(2) The charges, rates, fees, or formulas to be used to determine the charges, rates or fees, to be charged to the energy consumers electing to receive electric generation service or gas supply service pursuant to the government energy aggregation program;

(3) The method and procedures to be followed by the licensed electric power supplier or licensed gas supplier to solicit the affirmative and voluntary written consent of the consumer to participate in the government energy aggregation program including, but not necessarily limited to, mechanisms to educate energy consumers concerning the provisions of the aggregation program;

(4) The proposed terms and conditions of a standard contract between energy consumers and the licensed electric power supplier or licensed gas supplier including, but not necessarily limited to:

(a) The allocation of the risks in connection with the provision of such services between the licensed electric power supplier or licensed gas supplier and the energy consumers receiving such services;

(b) The terms of the proposed contract;

(c) The allocation of the risks associated with circumstances or occurrences beyond the control of the parties to the contract;

(d) Default and remedies; and

(e) The allocation of any penalties that may be imposed by any electric public utility or gas public utility as a result of over-delivery of electricity or gas, under-delivery of electricity or gas, or non-performance by the licensed electric power supplier or licensed gas supplier;

(5) The use of government aggregator resources, equipment, systems or employees in connection with such services;

(6) The term of the contract with the government aggregator;

(7) A provision indemnifying and holding the government aggregator harmless from all liabilities, damages and costs associated with any contract between a resident of the government aggregator and the licensed electric power supplier or licensed gas supplier;

(8) The requirements for the provision of a performance bond by the licensed electric power supplier or licensed gas supplier, if so required by the government aggregator;

(9) Procedures to ensure that participation in the aggregation program is the result of an affirmative choice by energy consumers, as evidenced by a written signature, and is consistent with rules and regulations adopted by the board;

(10) Terms and conditions applicable to consumer protection as provided in rules and regulations adopted by the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety; and

(11) Such other terms and conditions as the government aggregator deems necessary.

b. The award of a contract for a government energy aggregation program shall be based on the most advantageous, price and other factors considered. The governing body shall only award a contract for service to residential customers where the rate is lower than that guaranteed by the State-mandated rate reductions pursuant to section 4 of this act and the price of basic generation service pursuant to section 9 of this act, as determined by the board.

c. No concession fees, finders' fees, or other direct monetary benefit shall be paid to any government aggregator by, or on behalf of, a licensed electric power supplier or licensed gas supplier or broker or energy agent as a result of the contract.

d. A licensed electric power supplier or licensed gas supplier shall be subject to the prohibitions against political contributions in accordance with the provisions of R.S.19:34-45.

e. For any specific time period, a government aggregator may enter into only one contract for the provision of electric generation service and one contract for the provision of gas supply service to the consumers within its territorial jurisdiction.

f. A county government acting as a government aggregator shall not enter into a contract for the provision of a government energy aggregation program that is in competition with any existing contract of any government aggregator within its territorial jurisdiction.

(1) A county government may enter into a contract for a government energy aggregation

program only if one or more constituent municipalities in the county adopt an ordinance authorizing the county to enter into such a contract.

(2) A county government energy aggregation program shall only be conducted for residential and business customers located within the constituent municipalities that have approved participation in the county's government energy aggregation program.

C.48:3-93 Opportunity for participation in government energy aggregation program.

44. A government aggregator that chooses to provide a government energy aggregation program that includes residential or business customers shall provide such residential and business customers the opportunity to participate in a government energy aggregation program on a voluntary basis and in a clear and consistent manner. Any business or residential customer that elects to purchase electric generation service or gas supply service through a government energy aggregation program must do so affirmatively and voluntarily, as evidenced by a signature authorizing the customer's participation in a government energy aggregation program for electric generation service or a gas supply service where the terms and conditions of the program are clearly and plainly articulated in writing to the customer before the customer's signature. Residential and business customers who do not voluntarily and affirmatively choose, as evidenced by a written signature, to participate in a government energy aggregation program shall continue to be entitled to contract with and purchase electric generation service or gas supply service from any corporation or entity authorized by law to engage in the retail sale of such services.

C.48:3-94 Operation of limited governmental energy aggregation program.

45. A government aggregator that is a municipality or a county may, notwithstanding the provisions of section 44 of this act to the contrary, operate a limited government energy aggregation program that provides for the aggregation of residential electric generation service or gas supply service without the initial, affirmative, voluntary, written consent of residential customers for electric generation service or gas supply service, either separately or bundled, in accordance with the following procedures:

a. electric generation service or gas supply service for residential customers may be aggregated together with electric generation service, electric related service, gas supply service or gas related service, either separately or bundled, for the government aggregator's own facilities or with other government aggregators, provided that:

(1) the governing body adopts an ordinance in the case of a municipality, or resolution in the case of a county, indicating its intent to solicit bids for the provision of electric generation service or gas supply service, either separately or bundled, without the affirmative, voluntary, written consent of the residential customer, which approval shall require passage by a majority plus one vote of the full membership of the governing body;

(2) within 15 days of the adoption of such an ordinance or resolution, as appropriate, the governing body provides notice, in a form as determined by the board, to its residential customers advising them of their individual right to affirmatively decline participation in the government energy aggregation program, and providing 30 days for residential customers to respond in writing to the governing body of their decision to affirmatively decline participation in the government energy aggregation program; and

(3) upon expiration of the 30-day period required pursuant to paragraph (2) of subsection a. of this section, the governing body shall determine the number and identity of residential customers who did not affirmatively decline to participate in the government energy aggregation program.

b. (1) The governing body shall commence public bidding pursuant to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) to receive bids from a licensed electric power supplier or licensed gas supplier, as appropriate, for electric generation service or gas supply service, either separately or bundled, for those residential customers who did not affirmatively decline to participate in the government energy aggregation program pursuant to paragraph (2) of subsection a. of this section, and for electric generation service, electric related service, gas supply service or gas related service, either separately or bundled,

for the government aggregator's own facilities.

(2) Upon receipt of the bids, the governing body shall evaluate the proposals. The governing body shall select a licensed electric power supplier or licensed gas supplier, or both, based on the most advantageous, price and other factors considered. The governing body shall only select a licensed electric power supplier to be awarded a contract for service where the rate is lower than that guaranteed by the State-mandated rate reductions pursuant to section 4 of this act and the price of basic generation service pursuant to section 9 of this act.

c. Upon selection of a licensed electric power supplier or licensed gas supplier, or both, pursuant to subsection b. of this section, the governing body shall enter into a written agreement with the selected licensed supplier. The written agreement shall include:

(1) the contract with the selected licensed electric power supplier or licensed gas supplier, or both, for the government aggregator's own load;

(2) a contract form which shall comply with and include the requirements of subsection a. of section 43 of this act; and

(3) that the written agreement shall not take effect until the proposed contract in paragraph (2) of this subsection is approved by the board.

d. After entering into a written agreement with the selected licensed supplier, the governing body shall submit, to the board for approval, the proposed contract to be entered into by the selected licensed electric power supplier or licensed gas supplier, or both, with each residential customer who affirmatively consents to enter into a contract with the selected licensed electric power supplier or licensed gas supplier, or both. This submission shall include the proposed contract and any other information deemed appropriate by the board.

(1) Within 30 days of receipt of the submission, the board shall determine whether the submission is complete. If it is determined to be incomplete, it shall be returned, forthwith, along with a notice specifying the deficiency or deficiencies. The governing body shall correct the deficiency or deficiencies and resubmit the submission to the board.

(2) Upon being notified by the board that the submission is complete, the governing body shall cause a copy to be forwarded to the Division of the Ratepayer Advocate. Within 45 days of receipt, the Division of the Ratepayer Advocate shall recommend to the board to approve, modify or reject the submission.

(3) The board shall approve, reject or modify the submission within 60 days of the date the submission is deemed complete.

e. Upon approval of the proposed contract to be entered into by the selected licensed electric power supplier or licensed gas supplier, or both, with each residential customer who affirmatively consents to enter into a contract with the selected licensed electric power supplier or licensed gas supplier, or both, the governing body shall authorize the selected licensed electric power supplier or licensed gas supplier, or both, to solicit the affirmative and voluntary written consent to participate in the government energy aggregation program of any residential customer within the municipality who did not initially affirmatively decline to be part of a government energy aggregation program pursuant to the provisions of paragraph (2) of subsection a. of this section.

f. The licensed electric power supplier or licensed gas supplier, or both, selected pursuant to the provisions of this section shall be subject to the provisions of section 37 of this act.

g. Whenever the process results in a change of provider of energy or of price to program participants, the governing body shall give residential customers notice, as determined by the board, of their right to decline continued participation.

h. A government aggregator which is a county may implement the provisions of this section only as authorized pursuant to the provisions of subsection f. of section 43 of this act.

i. The provisions of this section shall only apply to government energy aggregation programs for residential customers.

j. Nothing in this section shall preclude a limited government energy aggregation program from including business customers as participants pursuant to section 44 of this act.

C.48:3-95 Rule adoptions by board.

46. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410

(C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, such interim rules and regulations as the board determines to be necessary to effectuate the provisions of this act within 90 days of the effective date of this act. Such standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the board in accordance with the provisions of the "Administrative Procedure Act."

47. R.S.40:48-1 is amended to read as follows:

Ordinances; general purpose.

40:48-1. Ordinances; general purpose. The governing body of every municipality may make, amend, repeal and enforce ordinances to:

Finances and property. 1. Manage, regulate and control the finances and property, real and personal, of the municipality;

Contracts and contractor's bonds. 2. Prescribe the form and manner of execution and approval of all contracts to be executed by the municipality and of all bonds to be given to it;

Officers and employees; duties, terms and salaries. 3. Prescribe and define, except as otherwise provided by law, the duties and terms of office or employment, of all officers and employees; and to provide for the employment and compensation of such officials and employees, in addition to those provided for by statute, as may be deemed necessary for the efficient conduct of the affairs of the municipality;

Fees. 4. Fix the fees of any officer or employee of the municipality for any service rendered in connection with his office or position, for which no specific fee or compensation is provided. In the case of salaried officers or employees, such fee shall be paid into the municipal treasury;

Salaries instead of fees; disposition of fees. 5. Provide that any officer or employee receiving compensation for his services, in whole or in part by fees, whether paid by the municipality or otherwise, shall be paid a salary to be fixed in the ordinance, and thereafter all fees received by such officer or employee shall be paid into the municipal treasury;

Maintain order. 6. Prevent vice, drunkenness and immorality; to preserve the public peace and order; to prevent and quell riots, disturbances and disorderly assemblages;

Punish beggars; prevention of loitering 7. Restrain and punish drunkards, vagrants, mendicants and street beggars; to prevent loitering, lounging or sleeping in the streets, parks or public places;

Auctions and noises. 8. Regulate the ringing of bells and the crying of goods and other commodities for sale at auction or otherwise, and to prevent disturbing noises;

Swimming; bathing costume. 9. Regulate or prohibit swimming or bathing in the waters of, in, or bounding the municipality, and to regulate or prohibit persons from appearing upon the public streets, parks and places clad in bathing costumes or robes, or costumes of a similar character;

Prohibit annoyance of persons or animals. 10. Regulate or prohibit any practice tending to frighten animals, or to annoy or injure persons in the public streets;

Animals; pounds; establishment and regulation. 11. Establish and regulate one or more pounds, and to prohibit or regulate the running at large of horses, cattle, dogs, swine, goats and other animals, and to authorize their impounding and sale for the penalty incurred, and the costs of impounding, keeping and sale; to regulate or prohibit the keeping of cattle, goats or swine in any part of the municipality; to authorize the destruction of dogs running at large therein;

Hucksters. 12. Prescribe and regulate the place of vending or exposing for sale articles of merchandise from vehicles;

Building regulations; wooden structures. 13. Regulate and control the construction, erection, alteration and repair of buildings and structures of every kind within the municipality; and to prohibit, within certain limits, the construction, erection or alteration of buildings or structures of wood or other combustible material;

Inflammable materials; inspect docks and buildings. 14. Regulate the use, storage, sale and disposal of inflammable or combustible materials, and to provide for the protection of life

and property from fire, explosions and other dangers; to provide for inspections of buildings, docks, wharves, warehouses and other places, and of goods and materials contained therein, to secure the proper enforcement of such ordinance;

Dangerous structures; removal or destruction; procedure. 15. Provide for the removal or destruction of any building, wall or structure which is or may become dangerous to life or health, or might tend to extend a conflagration; and to assess the cost thereof as a municipal lien against the premises;

Chimneys and boilers. 16. Regulate the construction and setting up of chimneys, furnaces, stoves, boilers, ovens and other contrivances in which fire is used;

Explosives. 17. Regulate, in conformity with the statutes of this State, the manufacture, storage, sale, keeping or conveying of gunpowder, nitroglycerine, dynamite and other explosives;

Firearms and fireworks. 18. Regulate and prohibit the sale and use of guns, pistols, firearms, and fireworks of all descriptions;

Soft coal. 19. Regulate the use of soft coal in locomotives, factories, power houses and other places;

Theaters, schools, churches and public places. 20. Regulate the use of theaters, cinema houses, public halls, schools, churches, and other places where numbers of people assemble, and the exits therefrom, so that escape therefrom may be easily and safely made in case of fire or panic; and to regulate any machinery, scenery, lights, wires and other apparatus, equipment or appliances used in all places of public amusement;

Excavations. 21. Regulate excavations below the established grade or curb line of any street, not greater than eight feet, which the owner of any land may make, in the erection of any building upon his own property; and to provide for the giving of notice, in writing, of such intended excavation to any adjoining owner or owners, and that they will be required to protect and care for their several foundation walls that may be endangered by such excavation; and to provide that in case of the neglect or refusal, for 10 days, of such adjoining owner or owners to take proper action to secure and protect the foundations of any adjacent building or other structure, that the party or parties giving such notice, or their agents, contractors or employees, may enter into and upon such adjoining property and do all necessary work to make such foundations secure, and may recover the cost of such work and labor in so protecting such adjacent property; and to make such further and other provisions in relation to the proper conduct and performance of said work as the governing body or board of the municipality may deem necessary and proper;

Sample medicines. 22. Regulate and prohibit the distribution, depositing or leaving on the public streets or highways, public places or private property, or at any private place or places within any such municipality, any medicine, medicinal preparation or preparations represented to cure ailments or diseases of the body or mind, or any samples thereof, or any advertisements or circulars relating thereto, but no ordinance shall prohibit a delivery of any such article to any person above the age of 12 years willing to receive the same;

Boating. 23. Regulate the use of motor and other boats upon waters within or bounding the municipality;

Fire escapes. 24. Provide for the erection of fire escapes on buildings in the municipality, and to provide rules and regulations concerning the construction and maintenance of the same, and for the prevention of any obstruction thereof or thereon;

Care of injured employees. 25. Provide for the payment of compensation and for medical attendance to any officer or employee of the municipality injured in the performance of his duty;

Bulkheads and other structures. 26. Fix and determine the lines of bulkheads or other works or structures to be erected, constructed or maintained by the owners of lands facing upon any navigable water in front of their lands, and in front of or along any highway or public lands of said municipality, and to designate the materials to be used, and the type, height and dimensions thereof;

Lifeguard. 27. Establish, maintain, regulate and control a lifeguard upon any beach within or bordering on the municipality;

Appropriation for life-saving apparatus. 28. Appropriate moneys to safeguard people from drowning within its borders, by location of apparatus or conduct of educational work in harmony

with the plans of the United States volunteer life-saving corps in this State;

Fences. 29. Regulate the size, height and dimensions of any fences between the lands of adjoining owners, whether built or erected as division or partition fences between such lands, and whether the same exist or be erected entirely or only partly upon the lands of any such adjoining owners, or along or immediately adjacent to any division or partition line of such lands. To provide, in such ordinance, the manner of securing, fastening or shoring such fences. In the case of fences thereafter erected contrary to the provisions thereof, the governing body may provide for a penalty for the violation of such ordinance, and in the case of such fence or fences erected or existing at the time of the passage of any such ordinance, may provide therein for the removal, change or alteration thereof, so as to make such fence or fences comply with the provisions of any such ordinance;

Advertise municipality. 30. Appropriate funds for advertising the advantages of the municipality.

Government Energy Aggregation Programs, 31. Establish programs and procedures pursuant to which the municipality may act as an government aggregator pursuant to sections 40 through 45 of P.L.1999, c.23 (C.48:3-89 through C.48:3-84). Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality acting as a government aggregator pursuant to P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed to be operating any form of public utility service pursuant to R.S.40:62-1 et seq., to the extent such municipality is solely engaged in the provision of such aggregation service and not otherwise owning or operating any plant or facility for the production or distribution of gas, electricity, steam or other product as provided in R.S.40:62-12.

48. N.J.S.12A:9-103 is amended to read as follows:

Perfection of security interests in multiple state transactions.

12A:9-103. Perfection of Security Interests in Multiple State Transactions.

(1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents, instruments, rights to proceeds of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by subchapter 3 of this chapter to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this State, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of 12A:9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this State and thereafter covered by a certificate of title issued by this State is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this State while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this State and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without the knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, ASCUS.1301 et seq., as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in subsection d. of 12A:8-110.

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in subsection e. of 12A:8-110.

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this paragraph and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

(7) Notwithstanding subsection (3) of this section, the law of this State shall govern the perfection and the effect of perfection of any security interest in bondable transition property.

49. N.J.S.12A:9-105 is amended to read as follows:

Definitions and index of definitions.

12A:9-105. Definitions and Index of Definitions.

(1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of chapter 1 (12A:1-201), and a receipt of the kind described in subsection (2) of 12A:7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (12A:9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in 12A:3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Bondable transition property" shall have the meaning set forth in section 3 of P.L. 1999, c.23 (C.48:3-51).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account." 12A:9-106.

"Attach." 12A:9-203.

"Commodity contract." 12A:9-115.

"Commodity customer." 12A:9-115.

"Commodity intermediary." 12A:9-115.

"Construction mortgage." 12A:9-313 (1).

"Consumer goods." 12A:9-109 (1).
 "Control." 12A:9-115.
 "Equipment." 12A:9-109 (2).
 "Farm products." 12A:9-109 (3).
 "Fixture." 12A:9-313(1).
 "Fixture filing." 12A:9-313(1).
 "General intangibles." 12A:9-106.
 "Inventory." 12A:9-109 (4).
 "Investment property." 12A:9-115.
 "Lien creditor." 12A:9-301 (3).
 "Proceeds." 12A:9-306 (1).
 "Purchase money security interest." 12A:9-107.
 "United States." 12A:9-103 (3).

(3) The following definitions in other chapters apply to this chapter:

"Broker." 12A:8-102.
 "Certificated security." 12A:8-102.
 "Check." 12A:3-104.
 "Clearing corporation." 12A:8-102.
 "Contract for sale." 12A:2-106.
 "Control." 12A:8-106.
 "Delivery." 12A:8-301.
 "Entitlement holder." 12A:8-102.
 "Financial asset." 12A:8-102.
 "Holder in due course." 12A:3-302.
 "Letter of Credit." 12A:5-102.
 "Note." 12A:3-104.
 "Proceeds of a letter of credit." 12A:5-114.
 "Sale." 12A:2-106.
 "Securities intermediary." 12A:8-102.
 "Security." 12A:8-102.
 "Security certificate." 12A:8-102.
 "Security entitlement." 12A:8-102.
 "Uncertificated security." 12A:8-102.

(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

50. N.J.S.12A:9-403 is amended to read as follows:

Filing of financing statement.

12A:9-403. (1) Presentation for filing of a financing statement, tender of the filing fee and acceptance of the statement by the filing officer constitute filing under this chapter.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person

other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of 12A:9-405, including payment of the required fee.

Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. A financing statement covering collateral which is or is to become a fixture or fixtures, or crops growing or to be grown, shall also be indexed in the name of the record owner of the realty.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement or any amendment of either shall be \$25.00.

(6) A real estate mortgage which is effective as a fixture filing under subsection (6) of 12A:9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate. If a filed financing statement relates to a security interest in bondable transition property and the financing statement so states, it is effective until a termination statement is filed.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of 12A:9-103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this State provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

C.48:3-63 Proceeds of transition bonds not considered income to utility; tax consequences of sale of assets.

51. a. All proceeds received from the issuance of transition bonds shall not be considered income to the electric public utility or gas public utility for the purposes of the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) or the "New Jersey Gross Income Tax Act," P.L.1976, c.47 (C.54A:1-1 et seq.).

b. The Director of the Division of Taxation in the Department of the Treasury is authorized to issue regulations regarding the determination of profit or loss related to the sale of assets which have been deemed to be part of stranded costs pursuant to sections 13 and 14 of this act for purposes of computing the corporation business tax to which the utility is subject.

52. R.S.48:2-13 is amended to read as follows:

Powers of board; public utility defined; exemptions from jurisdiction.

48:2-13. a. The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title.

The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court

whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.

b. Nothing contained in this Title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over any vehicles engaged in ridesharing arrangements with a maximum carrying capacity of not more than 15 passengers, including the driver, where the transportation of passengers is incidental to the purpose of the driver or any vehicles engaged in the transportation of passengers for hire in the manner and form commonly called taxicab service unless such service becomes or is held out to be regular service between stated termini; hotel buses used exclusively for the transportation of hotel patrons to or from local railroad or other common carrier stations, including local airports, or bus employed solely for transporting school children and teachers, to and from school, or any autobus with a carrying capacity of not more than 10 passengers now or hereafter operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than 20 passengers operated under municipal consent upon a route established wholly within the limits of not more than four contiguous municipalities within any county of the fifth or sixth class, which route in either case does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route.

c. Except as provided in section 7 of P.L.1995, c.101 (C.58:26-25), the board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

d. Unless otherwise specifically provided pursuant to P.L.1999, c.23 (48:3-49 et al.), all services necessary for the transmission and distribution of electricity and gas, including but not limited to safety, reliability, metering, meter reading and billing, shall remain the jurisdiction of the Board of Public Utilities. The board shall also maintain the necessary jurisdiction with regard to the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State as prescribed by the board or any other federal or multi-jurisdictional agency responsible for reliability and capacity in the State.

e. Notwithstanding the provisions of subsection a. of this section, the board shall have the authority to classify as regulated the sale of any thermal energy service by a cogenerator or district heating system, for the purpose of providing heating or cooling to a residential dwelling if, after notice and hearing, it determines that the customer does not have sufficient space on its property to install an alternative source of equivalent thermal energy, there is no contract governing the provision of thermal energy service for the relevant period of time, and that sufficient competition is no longer present, based upon consideration of such factors as: ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area. Upon such a classification, the board may determine such rates for the thermal energy service for the purpose of providing heating or cooling to a residential dwelling as it finds to be consistent with the prevailing cost of alternative sources of thermal energy in similar situations. The board, however, shall continue to monitor the thermal energy service to such residential dwellings and, whenever the board finds that the thermal energy service has again become sufficiently competitive pursuant to the criteria listed above, the board shall cease to regulate the sale or production of the service. The board shall not have the authority to regulate the sale or production of steam or any other form of thermal energy, including hot and chilled water, to non-residential customers.

f. Nothing contained in this Title shall extend the powers of the board to include supervision and regulation of, or jurisdiction and control over, an entity engaged in the provision

or use of sewage effluent for the purpose of providing a cooling medium to an end user or end users on a single site, which provision results in the conservation of potable water which would otherwise have been used for such purposes.

53. Section 3 of P.L.1995, c.180 (C.48:2-21.26) is amended to read as follows:

C.48:2-21.26 Standards for off-tariff rate agreement.

3. a. No later than October 18, 1995 and notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Board of Public Utilities shall initiate a proceeding and shall adopt, after notice, provision of the opportunity for comment, and public hearing, specific standards regarding minimum prices, confidentiality standards, maximum contract duration, filing requirements, and such other standards as the board may determine are necessary for off-tariff rate agreements consistent with this act. Any subsequent modification of the standards that is adopted by the board shall be adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. After the adoption by the board of specific standards pursuant to subsection a. of this section, an electric public utility may, within seven years of July 20, 1995, enter into an off-tariff rate agreement with an individual retail customer pursuant to the provisions of sections 3 and 4 of P.L.1995, c.180 (C.48:2-21.26 and 48:2-21.27). The provisions of sections 3 and 4 shall not apply to an off-tariff rate agreement entered into by an electric public utility after that seven-year period, except as otherwise provided by the board. Notwithstanding the seven-year limitation imposed pursuant to this subsection, an off-tariff rate agreement that is entered into during that seven-year period shall remain in effect until its expiration pursuant to the terms of the agreement.

c. An off-tariff rate agreement shall be filed with the board a minimum of 30 days prior to its effective date along with sufficient information to demonstrate that the off-tariff rate agreement meets the conditions established in subsection d. of this section and the standards established pursuant to subsection a. of this section. The entire agreement shall be available to the public, except that a public utility may petition the board to keep confidential certain parts of the agreement or supporting documentation that are competitively sensitive. Upon petition by the public utility, the board may classify as confidential any part of the agreement that is found to contain competitively sensitive information that, if revealed, would harm the competitive position of either party to the agreement. A copy of the off-tariff rate agreement and supporting information shall be served simultaneously upon the Director of the Division of the Ratepayer Advocate, or its successor agency. The staff of the board and the division shall have full access to all portions of the agreement and to any supporting documentation, subject to a standard non-disclosure agreement to be approved by the board. The board or its staff shall review the agreement, and upon review the board may delay its implementation if it requires additional time to review the agreement or shall disapprove the agreement upon a finding that it does not meet the conditions established in subsection d. of this section and the standards established pursuant to subsection a. of this section. If the board does not issue notice that it is delaying implementation for further review or that it disapproves the agreement, the utility may implement the off-tariff rate agreement.

An off-tariff rate agreement implemented pursuant to this subsection shall not include any reduction in the gross receipts and franchise tax or a successor tax pursuant to P.L.1997, c.162 (C.54:30A-100 et seq.).

d. An off-tariff rate agreement implemented pursuant to this section prior to the effective date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53) may establish a price for electricity to a retail customer that is different from, but in no case higher than, that specified in the utility's current cost-of-service based tariff rate otherwise applicable to that customer. An off-tariff rate agreement implemented pursuant to this section on or after the effective date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53) may establish a price for the transmission or distribution of electricity to a retail customer that is different from, but in no case higher than, that specified in the electric public utility's current cost-of-service based tariff rate for transmission or distribution

service otherwise applicable to that customer. An off-tariff rate agreement shall be subject to the following conditions:

(1) There shall be no retroactive recovery by the utility from its general ratepayer base of any revenue erosion that occurs prior to the conclusion of the utility's next base rate case. Subsequent to the conclusion of the utility's next base rate case, any such recovery shall be prospective only and in accordance with section 4 of P.L.1995, c.180 (C.48:2-21.27).

(2) In no event shall any customer be required to enter into an off-tariff rate agreement.

(3) An off-tariff rate for electricity at a minimum shall equal the sum of the following:

(a) the electric public utility's marginal cost to provide transmission or distribution service to the customer over the term of the off-tariff rate agreement,

(b) the per kilowatt hour contribution to the societal benefits charge, market transition charge, and transition bond charge, as established pursuant to P.L.1999, c.23 (C.48:3-49 et al.) and otherwise chargeable under the standard applicable rate schedule, and

(c) a floor margin to be specified by the board pursuant to subsection a. of this section, which shall constitute the minimum contribution by an off-tariff customer toward a public utility's fixed transmission and distribution costs.

(4) Evidence of a comprehensive energy audit of the customer's facility must be submitted to the utility prior to the effective date of the off-tariff rate agreement, in order to ensure that the customer has evaluated cost-effective energy efficiency and demand side management measures at its facility as part of its efforts to reduce electricity costs.

(5) The term of the off-tariff rate agreement shall not exceed a maximum number of years, to be specified by the board pursuant to subsection a. of this section, except that the term of an off-tariff rate agreement may exceed the maximum contract term established by the board, only with the prior review and approval of the board on a case by case basis.

(6) The electric public utility shall not make the provision of any competitive service or basic generation service offered by the public utility or its related competitive business segment to the customer a pre-condition to the offering of or agreement to an off-tariff rate agreement.

(7) The utility shall submit any information required by the filing requirements established pursuant to subsection a. of this section.

e. Each electric public utility shall file with the board and the Director of the Division of the Ratepayer Advocate, on a periodic basis to be determined by the board, a report, which shall be made available to the public, that includes the number of off-tariff rate contracts implemented, the aggregate expected revenues and margins derived thereunder, and an estimate of the aggregate differential between the revenues produced under the off-tariff rate agreements and the revenues that would have been produced under a standard board-approved tariff rate, so that the board can evaluate the total impact of off-tariff rate agreements on the financial integrity of the utility and on its ratepayers.

f. Upon notice and hearing, the board may suspend an electric public utility's implementation of additional off-tariff rate agreements based upon information in the report filed pursuant to subsection e. of this section or with other good cause. The board may suspend additional off-tariff rate agreements during the pendency of any such hearings.

54. Section 4 of P.L.1995, c.180 (C.48:2-21.27) is amended to read as follows:

C.48:2-21.27 Base rate case proceedings.

4. a. An electric public utility that enters into an off-tariff rate agreement pursuant to section 3 of P.L.1995, c.180 (C.48:2-21.26) shall not recover through rates any revenue erosion that occurs between the effective date of the agreement and the conclusion of the public utility's next base rate case.

b. As part of a base rate case proceeding, an electric public utility may request prospective recovery of a portion of the quantifiable revenue erosion resulting from an existing off-tariff rate agreement with a customer that previously purchased power from the utility under a tariff set by the board. Whenever a public utility requests partial recovery of revenue erosion from an off-tariff rate agreement, and notwithstanding any provision of subsection c. of section 3 of P.L.1995, c.180 (C.48:2-21.26) to the contrary, the entire agreement shall be available to the

public, except that a public utility may petition the board to keep confidential certain parts of the agreement or supporting documentation that are competitively sensitive. Upon petition by the public utility, and after an opportunity for all interested parties to comment, the board may classify as confidential any part of the agreement that is found to contain competitively sensitive information that, if revealed, would harm the competitive position of either party to the agreement. An intervenor in the base rate case proceeding may request access to information that has been classified as confidential. The board shall grant such access, subject to an executed non-disclosure agreement, if the board determines that the intervenor's interest cannot be pursued fully in the base rate case proceeding without access to the information and that the intervenor is not a direct competitor of either party to the agreement.

c. In a base rate case proceeding at which an electric public utility requests, pursuant to subsection b. of this section, prospective recovery of revenue erosion, the board may approve prospective recovery of 50 percent of the revenue erosion occurring after the conclusion of that base rate case proceeding, in order to ensure that ratepayers shall not bear a greater portion of the revenue erosion resulting from the off-tariff rate agreement than the public utility, if the board determines that:

(1) All appropriate offsetting financial adjustments, including but not limited to sales growth, standby and backup sales to the customer, are credited to the revenue requirement calculation and that the utility is not already achieving a fair and reasonable rate of return;

(2) The utility has developed and implemented a corporate strategy to lower its cost of delivering power;

(3) Ratepayers are paying lower rates with the implementation of an off-tariff rate agreement for a particular customer than without such implementation, because the off-tariff rate agreement allowed the utility to continue to maintain the customer and thus to continue to receive the customer's contribution to the fixed transmission and distribution costs of the electric public utility. A determination that the public utility's ratepayers are paying lower rates with the implementation of an off-tariff rate agreement prior to the effective date of P.L.1999, c.23 (C.48:3-49 et al.) will therefore include a finding that the customer receiving the off-tariff rate:

(a) Had a viable alternative source of power deliverable to its site and, had it not received the off-tariff rate, would have ceased to obtain its power primarily from the public utility; or

(b) Would have relocated its facility outside of the State to a location where power could be obtained at a lower cost, had it not received the off-tariff rate.

A determination that the public utility's ratepayers are paying lower rates with the implementation of an off-tariff rate agreement on or after the effective date of P.L.1999, c.23 (C.48:3-49 et al.) will therefore include a finding that the customer receiving the off-tariff rate would have relocated its facility outside of the State to a location where it could have obtained delivered power at a lower cost, had it not received the off-tariff rate; and

(4) The utility and the customer have otherwise complied with the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.) and the off-tariff rate standards adopted by the board pursuant to subsection a. of section 3 of P.L.1995, c.180 (C.48:2-21.26).

55. Section 5 of P.L.1995, c.180 (C.48:2-21.28) is amended to read as follows:

C.48:2-21.28 Petitions for alternative forms of regulation; NJSAVEprogram.

5. a. An electric or gas public utility may petition the Board of Public Utilities to be regulated under an alternative form of regulation for its distribution system only, for the setting of prices for all or a portion of its retail customer base, or for the purpose of creating incentives consistent with the provisions of this act without changing the rate reductions for the sustained period as set forth under section 4 of P.L.1999, c.23 (C.48:3-52), no earlier than 12 months after the starting date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53). The public utility shall submit its plan for an alternative form of regulation with its petition. The public utility shall also file its petition and plan concurrently with the Director of the Division of the Ratepayer Advocate, or its successor. The public utility shall provide, within 15 days of the filing of its petition and plan, notice of the specific filing to the clerk of each municipality, to the clerk of each board of Chosen Freeholders, and to each county executive,

in the service territory of the public utility. The public utility shall also provide, within 15 days of the filing, public notice to its customers of the filing, either by notice in a newspaper that has a general circulation in its service territory or by bill inserts as directed by the board. The board shall review the plan and may approve the plan, or approve it with modifications, if the board finds, after notice and hearing, that the plan will provide benefits to customers of the public utility, and that the plan meets the following standards:

- (1) Will further the State's objective of producing lower rates for New Jersey consumers;
- (2) Will provide incentives for the utility to lower its costs and rates;
- (3) Will provide incentives to improve utility efficiency and productivity;
- (4) Will foster the long-term delivery of electricity or natural gas in a manner that will improve the quality and choices of service;
- (5) Includes a mechanism for the board to monitor and review the plan on a periodic basis over its term and to take appropriate actions if it is found that the plan is not achieving its intended results;
- (6) Will maintain or improve pre-existing service quality standards, except that an individual customer may agree to accept lower quality service. A public utility shall continue to provide safe, adequate and proper service pursuant to R.S.48:2-23;
- (7) Will not result in cross-subsidization among or between groups of utility customers, or between the portion of the utility's business or operations subject to the alternative form of regulation and the portion of the utility's business or operations that is not subject to the alternative form of regulation;
- (8) Will reduce regulatory delay and cost;
- (9) Is in the public interest and will produce just and reasonable rates;
- (10) Will enhance economic development in the State;
- (11) Will not discourage energy efficiency or distributed generation as alternatives to distribution plant investment and will explore ways to remove the linkage between retail throughput and the recovery of fixed and stranded costs; and
- (12) Is otherwise consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.).

In preparation for the development of such plans, each electric public utility shall begin to collect distribution cost data that will be needed to evaluate accurately alternatives to traditional infrastructure investments.

b. Consistent with the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.), and provided that the plan meets the standards established in subsection a. of this section, the board may approve a plan for an alternative form of regulation that permits a gas or electric public utility to establish a rate for a group of retail customers without a finding of rate base and reasonable rate of return pursuant to the pre-existing provisions of Title 48 of the Revised Statutes, if the board determines that the rate being charged by the utility to a retail customer is no lower than a minimum price that is determined by the board to prevent anti-competitive pricing and that:

- (1) The group of customers has access to a competitive market for supply of power to its site and that market pricing of delivery services for that group of customers is thereby appropriate; or
- (2) The group of customers has otherwise voluntarily agreed in writing to accept a price that has not been established based upon rate base and reasonable rate of return standards pursuant to Title 48 of the Revised Statutes; or
- (3) At the time of the plan's approval, the level of retail prices of the utility for the group of customers is determined to be reasonably reflective of the level necessary to produce a fair and reasonable rate of return pursuant to a current evaluation under pre-existing standards of Title 48 of the Revised Statutes, and that the plan provides mechanisms for prospective adjustments to rates that will track trends in utility rates.

c. (Deleted by amendment, P.L.1999, c.23).

d. An alternative regulation plan as provided for in this section shall not include any mechanism for:

- (1) Recovery of revenue erosion from other ratepayers; or
- (2) A reduction in the gross receipts and franchise tax or a successor tax pursuant to P.L.1997, c.162 (C.54:30A-100 et seq.).

e. The board may require an independent audit or such accounting and reporting systems from electric and gas utilities as are necessary to allow a proper allocation of investments, costs or expenses for all services provided under the provisions of P.L.1995, c.180 (C.48:2-21.24 et seq.) that are subject to the jurisdiction of the board.

f. Consistent with the provisions of this section, the Legislature hereby authorizes and directs the New Jersey Economic Development Authority, in conjunction with the Board of Public Utilities, to establish the New Jersey Senior and Alternate Vital Energy (NJ SAVE) program for the purpose of funding capital improvements of natural gas distribution facilities, and for purchase and installation of natural gas heating equipment and appliances located on the premises of homeowners, where those homeowners reside in all-electric homes in age-restricted communities.

The authority may issue bonds on behalf of gas public utilities, the proceeds of which may be used for the purpose of distributing in the form of loans to eligible customers for the purpose of allowing such customers to pay home heating and appliance conversion costs and the customer's contribution, to the extent applicable, to gas distribution system extension costs required to serve those customers.

The gas public utility shall be permitted to assess a meter charge, as approved by the board, to recover the funds to repay loan principal and interest. Monies collected by the gas public utility as a result of such meter charge shall be utilized by the gas public utility to repay the bonds issued by the authority. Nothing in this section shall be construed to relieve the gas public utility of its obligation to repay any bonds issued by the authority.

56. Section 6 of P.L.1995, c.180 (C.48:2-21.29) is amended as follows:

C.48:2-21.29 Reports.

6. The Board of Public Utilities shall submit a report to the Legislature on the implementation of P.L.1995, c.180 (C.48:2-21.24 et seq.) and of the restructuring of the electric power industry pursuant to P.L.1999, c.23 (C.48:3-49 et al.) on December 1 of the third year following the effective date of P.L.1999, c.23 (C.48:3-49 et al.) and every four years thereafter.

C.48:3-96 Standards for inspection, maintenance, repair, replacement of electric equipment, facilities.

57. a. The Board of Public Utilities shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), standards for the inspection, maintenance, repair and replacement of the distribution equipment and facilities of electric public utilities. The standards may be prescriptive standards, performance standards, or both, and shall provide for high quality, safe and reliable service. The board shall also adopt standards for the operation, reliability and safety of such equipment and facilities during periods of emergency or disaster. The board shall adopt a schedule of penalties for violations of these standards.

b. In adopting standards pursuant to this section, the board shall consider cost, local geography and weather, applicable industry codes, national electric industry practices, sound engineering judgment, and past experience.

c. The board shall require each electric public utility to report annually on its compliance with the standards adopted pursuant to this section, and the utility shall make these reports available to the public.

58. Section 10 of P.L.1975, c.291 (C.40:55D-19) is amended to read as follows:

C.40:55D-19 Appeal or petition in certain cases to the Board of Public Utilities.

10. Appeal or petition in certain cases to the Board of Public Public Utilities.

If a public utility, as defined in R.S.48:2-13, or an electric power generator, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), is aggrieved by the action of a municipal agency through said agency's exercise of its powers under this act, with respect to any action in which the public utility or electric power generator has an interest, an appeal to the Board of Public Utilities of the State of New Jersey may be taken within 35 days after such action without appeal

to the municipal governing body pursuant to section 8 of this act unless such public utility or electric power generator so chooses. In such case appeal to the Board of Public Utilities may be taken within 35 days after action by the governing body. A hearing on the appeal of a public utility to the Board of Public Utilities shall be had on notice to the agency from which the appeal is taken and to all parties primarily concerned, all of whom shall be afforded an opportunity to be heard. If, after such hearing, the Board of Public Utilities shall find that the present or proposed use by the public utility or electric power generator of the land described in the petition is necessary for the service, convenience or welfare of the public, including, but not limited to, in the case of an electric power generator, a finding by the board that the present or proposed use of the land is necessary to maintain reliable electric or natural gas supply service for the general public and that no alternative site or sites are reasonably available to achieve an equivalent public benefit, the public utility or electric power generator may proceed in accordance with such decision of the Board of Public Utilities, any ordinance or regulation made under the authority of this act notwithstanding.

This act or any ordinance or regulation made under authority thereof, shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service, if upon a petition of the public utility, the Board of Public Utilities shall after hearing, of which any municipalities affected shall have notice, decide the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public.

Nothing in this act shall be construed to restrict the right of any interested party to obtain a review of the action of the municipal agency or of the Board of Public Utilities by any court of competent jurisdiction according to law.

59. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid by any court of competent jurisdiction, the invalidity shall not affect any other provision or the application of this act which can be given effect without the invalid provision or application.

C.48:3-9.7 Construction of act relative to DOT, DEP.

60. a. No provision of this act shall be interpreted or construed in any fashion so as to amend or alter the functions, powers and duties of the Commissioner of Transportation in respect to autobuses, charter and special bus operations, railroads, street railways, traction railways, and subways as transferred to the commissioner by Executive Reorganization filed on October 5, 1978, pursuant to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

b. No provision of this act shall be interpreted or construed in any fashion so as to amend or alter the functions, powers and duties of the Commissioner of Environmental Protection in respect to the commissioner's role in protecting the environment.

61. Section 5 of P.L.1970, c.73 (C.56:9-5) is amended to read as follows:

C.56:9-5 Certain activities permitted.

5. a. This act shall not forbid the existence of trade and professional organizations created for the purpose of mutual help, and not having capital stock, nor forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof not otherwise in violation of this act; nor shall those organizations or members per se be illegal combinations or conspiracies in restraint of trade under the provisions of this act.

b. No provisions of this act shall be construed to make illegal:

(1) The activities of any labor organization or of individual members thereof which are directed solely to labor objectives which are legitimate under the laws of either the State of New Jersey or the United States;

(2) The activities of any agricultural or horticultural cooperative organization, whether incorporated or unincorporated, or of individual members thereof, which are directed solely to objectives of such cooperative organizations which are legitimate under the laws of either the

State of New Jersey or the United States;

(3) The activities of any public utility, as defined in R.S.48:2-13 to the extent that such activities are subject to the jurisdiction of the Board of Public Utilities, the Department of Transportation, the Federal Energy Regulatory Commission, the Federal Communications Commission, the Federal Department of Transportation or the Interstate Commerce Commission, except that this exemption, and that of subsection c. of this section, shall apply to the activities of any electric public utility or gas public utility or any related competitive business segment of an electric public utility or related competitive business segment of a gas public utility, or any public utility holding company or related competitive business segment of a public utility holding company as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), only to the extent such activities are expressly required by and supervised pursuant to State regulation or are required by federal or State law;

(4) The activities, including, but not limited to, the making of or participating in joint underwriting or joint reinsurance arrangements, of any insurer, insurance agent, insurance broker, independent insurance adjuster or rating organization to the extent that such activities are subject to regulation by the Commissioner of Banking and Insurance of this State under, or are permitted, or are authorized by, the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) and the "Department of Insurance Act of 1970," P.L.1970, c.12 (C.17:1C-1 et seq.), provided, however, the provisions of this paragraph (4) shall not apply to private passenger automobile insurance business, except as provided in section 69 of P.L.1990, c.8 (C.17:33B-31);

(5) The bona fide religious and charitable activities of any not for profit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes;

(6) The activities engaged in by securities dealers, issuers or agents who are (i) a. licensed by the State of New Jersey under the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.); or (ii) members of the National Association of Securities Dealers, or (iii) members of any National Securities Exchange registered with the Securities and Exchange Commission under the "Securities Exchange Act of 1934," as amended, in the course of their business of offering, selling, buying and selling, or otherwise trading in or underwriting securities, as agent, broker, or principal, and activities of any National Securities Exchange so registered, including the establishment of commission rates and schedules of charges;

(7) The activities of any State or national banking institution to the extent that such activities are regulated or supervised by officers of the State government under the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under the banking laws of the United States;

(8) The activities of any state or federal savings and loan association to the extent that such activities are regulated or supervised by officers of the State government under the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under the banking laws of the United States;

(9) The activities of any bona fide not for profit professional association, society or board, licensed and regulated by the courts or any other agency of this State, in recommending schedules of suggested fees, rates or commissions for use solely as guidelines in determining charges for professional and technical services; or

(10) The activities permitted under the provisions of chapter 4 of Title 56 of the Revised Statutes, "An act to regulate the retail sale of motor fuels," P.L.1938, c.163 (C.56:6-1 et seq.), the "Unfair Motor Fuels Practices Act," P.L.1953, c.413 (C.56:6-19 et seq.) and the "Unfair Cigarette Sales Act of 1952," P.L.1952, c.247 (C.56:7-18 et seq.).

c. This act shall not apply to any activity directed, authorized or permitted by any law of this State that is in conflict or inconsistent with the provisions of this act, and the enactment of this act shall not be deemed to repeal, either expressly or by implication, any such other law in effect on the date of its enactment.

62. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to read as follows:

C.54:32B-8.46 Receipts from sale, wxchange, delivery, use of electricity; purchase or use of

natural gas or utility service.

26. a. Receipts from the sale, exchange, delivery or use of electricity are exempt from the tax imposed under the Sales and Use Tax Act if the electricity:

(1) (a) Is sold by a municipal electric corporation in existence as of December 31, 1995 and used within its municipal boundaries except if the customer is located within a franchise area served by an electric public utility other than the municipal electric corporation. If a municipal electric corporation makes sales of electricity used outside of its municipal boundaries or within a franchise area served by an electric public utility other than the municipal electric corporation, then receipts from those sales of electricity by the municipal electric corporation shall be subject to tax under P.L.1966, c.30; or

(b) Is sold by a municipal electric utility in existence as of December 31, 1995, and used within its municipal boundaries. However, a municipal electric utility's receipts from the sale, exchange, delivery or use of electricity used by customers outside of its municipal boundaries and within its franchise area existing as of December 31, 1995 shall be subject to tax. If a municipal electric utility makes sales of electricity used outside of its franchise area existing as of December 31, 1995, then receipts from those sales of electricity by the municipal electric utility shall be subject to tax under P.L.1966, c.30;

(2) Was generated by a facility located on the user's property or property purchased or leased from the user by the person owning the generation facility and such property is contiguous to the user's property, and the electricity was consumed by the one on-site end user on the user's property, and was not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcated the user's or generation facility owner's otherwise contiguous property or the electricity was consumed by an affiliated user on the same site, or by a non-affiliated user on the same site with an electric distribution system which is integrated and interconnected with the user on or before March 10, 1997; the director may promulgate rules and regulations and issue guidance with respect to all issues related to affiliated users; or

(3) Is sold for resale.

The State Treasurer shall monitor monies deposited into the Energy Tax Receipts Property Tax Relief Fund on an annual basis and may report the results of the State Treasurer's analysis on the fund to the Governor and the Legislature, along with any recommendations on the exemptions in this subsection.

b. Receipts from the purchase or use of the following are exempt from the tax imposed under the Sales and Use Tax Act:

(1) Natural gas or utility service that is used to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity; and

(2) Natural gas and utility service that is used for co-generation at any site at which a co-generation facility was in operation on or before March 10, 1997, or for which an application for an operating permit or a construction permit and a certificate of operation in order to comply with air quality standards under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the Department of Environmental Protection on or before March 10, 1997, to produce electricity for use on that site.

C.40A:11-15.2 Contracts for purchase of electricity for new county corection facility.

63. In the case of construction of a new county correction facility, in addition to the purchase of thermal energy, contracts for the purchase of electricity shall be permitted pursuant to subsection (1)(c) of section 15 of P.L.1971, c.198 (C.40A:11-15).

64. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to read as follows:

C.40A:11-15 Duration of certain contracts.

15. All purchases, contracts or agreements for the performing of work or the furnishing of materials, supplies or services shall be made for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be made for a period not to exceed 12 consecutive months. Contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) (Deleted by amendment, P.L.1996, c.113.)

(b) (Deleted by amendment, P.L.1996, c.113.)

(c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;

(2) (Deleted by amendment, P.L.1977, c.53.)

(3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;

(4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when such contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than three years;

(6) Insurance, for any term of not more than three years;

(7) Leasing or servicing of automobiles, motor vehicles, machinery and equipment of every nature and kind, for a period not to exceed three years; provided, however, such contracts shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a telephone company which is subject to the jurisdiction of the Board of Public Utilities for a term not exceeding five years;

(9) Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding three years;

(11) On-site inspections undertaken by private agencies pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more than three years;

(12) The performance of work or services or the furnishing of materials or supplies for the purpose of conserving energy in buildings owned by, or operations conducted by, the contracting unit, the entire price of which to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations promulgated by the Department of Environmental Protection establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed ten years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services of the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except for those contracts otherwise exempted pursuant to subsection (30), (31), (34) or (35) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, interconnections between existing water supply facilities, machinery and equipment and other property, real, personal and mixed, acquired, constructed or operated, or to be acquired, constructed or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of resource recovery services by a qualified vendor, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, and the Department of Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et al.); and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production; and "residual ash" means the bottom ash, fly ash, or any combination thereof, resulting from the combustion of solid waste at a resource recovery facility;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Department of Environmental Protection, and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any

other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except for those contracts otherwise exempted pursuant to subsection (36) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of materials or services for the purpose of lighting public streets, for a term not to exceed five years, provided that the rates, fares, tariffs or charges for the supplying of electricity for that purpose are approved by the Board of Public Utilities;

(21) In the case of a contracting unit which is a county or municipality, the provision of emergency medical services by a hospital to residents of a municipality or county as appropriate for a term not to exceed five years;

(22) Towing and storage contracts, awarded pursuant to paragraph u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for any term not exceeding three years;

(23) Fuel for the purpose of generating electricity for a term not to exceed eight years;

(24) The purchase of electricity or administrative or dispatching services related to the transmission of such electricity, from a public utility company subject to the jurisdiction of the Board of Public Utilities, a similar regulatory body of another state, or a federal regulatory agency, or from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24,1991, for a term not to exceed 40 years;

(25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;

(26) Claims administration services, for any term not to exceed three years;

(27) The provision of transportation services to elderly, disabled or indigent persons for any term of not more than three years. For the purposes of this subsection, "elderly persons" means persons who are 60 years of age or older. "Disabled persons" means persons of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent persons" means persons of any age whose income does not exceed 100 percent of the poverty level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C. s.9902 (2));

(28) The supplying of liquid oxygen or other chemicals, for a term not to exceed five years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the contracting unit;

(29) The performance of patient care services by contracted medical staff at county hospitals, correction facilities and long term care facilities, for any term of not more than three years;

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to the "County and

Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the agreement is entered into no later than January 7, 1995, for any term of not more than forty years;

(31) The provision of water supply services or the financing, construction, operation or maintenance or any combination thereof, of a water supply facility or any component part or parts thereof, by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a period not to exceed 40 years;

(32) Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

(34) A contract between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water supply services may be entered into for any term which, when all optional extension periods are added, may not exceed 40 years;

(35) An agreement for the purchase of a supply of water from a public utility company subject to the jurisdiction of the Board of Public Utilities in accordance with tariffs and schedules of charges made, charged or exacted or contracts filed with the Board of Public Utilities, for any term of not more than 40 years;

(36) A contract between a public entity and a private firm or public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the provision of wastewater treatment services may be entered into for any term of not more than 40 years, including all optional extension periods; and

(37) The operation and management of a facility under a license issued or permit approved by the Department of Environmental Protection, including a wastewater treatment system or a water supply or distribution facility, as the case may be, for any term of not more than seven years. For the purposes of this subsection, "wastewater treatment system" refers to facilities operated or maintained for the storage, collection, reduction, disposal, or other treatment of wastewater or sewage sludge, remediation of groundwater contamination, stormwater runoff, or the final disposal of residues resulting from the treatment of wastewater; and "water supply or distribution facility" refers to facilities operated or maintained for augmenting the natural water resources of the State, increasing the supply of water, conserving existing water resources, or distributing water to users.

All multiyear leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Public Utilities, contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts and agreements for the provision of work or the supplying of equipment to promote energy conservation authorized pursuant to subsection (12) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35) or (37) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36) or (37) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of such electricity authorized pursuant to subsection (24) above, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

Repealer.

65. The following sections are repealed:

The "Public Utility Accident Fault Determination Act," P.L.1983, c.94 (C.48:2-21.4 et seq.).
P.L.1963, c.114 (C.48:7-7 through 48:7-13).

The "Electric Facility Need Assessment Act," P.L.1983, c.115 (C.48:7-16 through 25).
R.S.48:9-20.

Sections 2, 5.1, 10, 11, 17, 23, and 25 of the "Department of Energy Act," P.L.1977, c.146
(C.52:27F-2, 52:27F-6, 52:27F-12, 52:27F-13, 52:27F-19, 52:27F-26, and 52:27F-28).

66. This act shall take effect immediately, except that, to the extent not already provided for by existing law, the authority of the board to order rate unbundling filings, restructuring filings, and stranded cost filings, perform audits of utility competitive services and take such other regulatory actions, including, but not limited to, the holding of hearings, providing of notice and opportunity for comment, the issuance of orders, and the establishment of standards, including auction standards adopted for application to an electric public utility that is executing a divestiture plan, and to take such other anticipatory regulatory action as it deems necessary to fulfill the purposes or requirements of this act shall apply retroactively to April 1, 1997 provided that the board shall take such actions as may be necessary, if any, to ensure that the requirements of this act are met in all regulatory actions related to this act which were commenced prior to its enactment.

Approved February 9, 1999.